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LAWS OF WISCONSIN

CONCERNING THE

ORGANIZATION AND GOVERNMENT

OF

TOWNS,

AND THE POWERS AND DUTIES

OF

Town Officers and Boards of Supervisors,

WITH

NUMEROUS PRACTICAL FORMS.

---

BY ELIJAH M. HAINES.

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CHICAGO:

PUBLISHED BY WM. B. EREN, 148 LAKE ST.

JANESVILLE: J. SUTHERLAND.  
WATSON, BIRMINGHAM & CO.  
GRAND RAPIDS: J. M. BRENDAGE.

1858.

SEND FOR A CIRCULAR

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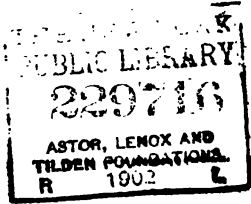
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1858.



Entered according to the Act of Congress in the year 1858, by  
ELIJAH M. HAINES,  
in the Clerk's Office of the District Court of the United States, for the  
Northern District of Illinois.

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## PREFACE.

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IN presenting this compilation to the public, it is proper to remark, that it has been the intention of the compiler to embrace all that portion of the statute laws of the State of Wisconsin which relates to the organization and government of towns, and the powers and duties of town officers, with the general powers of county boards of supervisors; also, to give all such forms as may be required in transacting business, or performing duties under the law, with the addition of copious notes by way of instruction, with references to adjudicated cases, that the whole may form a complete guide for all town officers, and others interested in this peculiar branch of the law.

It has been the aim of the compiler to arrange the work in as concise and complete a form as possible—that it should contain so much of the law as the subject of the work ought properly to embrace, and nothing more; this will enable the town officer to turn at once to any portion of his duties, without the necessity of wading through a vast amount of other matter, foreign to the subject, as would be the case in consulting a large volume of the statutes. In the arrangement, it will be discovered, that the notes and forms are carried along in connection with the text; and not added at the conclusion by way of appendix, as is often the case with works of this nature; but are presented upon the same page, or in immediate connection with the text.

This work, as will be seen by the following Act of the Legislature, has received the favorable attention of the State of Wisconsin. Many of the members, both of the Senate and Assembly, expressed a deep interest in the matter, as it would afford great relief to town officers in the discharge of their duties, as well as secure uniformity in practice throughout the State, thereby avoiding the confusion and uncertainty which has existed in practice under the town system of government; among whom were Senators Hanchett, (by whom the bill was introduced,) Chase, Kingston, Boyd, Simpson, Sutherland, Clark, Wheeler, Bean, Warren, Davis, and others. In the Assembly were Mr. Speaker Lovell, Bemis, Corson, Dufer, H. H. and James B. Gray, Millard, McAllister, Pease, Prentice,

\*



Rodolf, Runals, P. H. Smith, Vinton, Weil, and several others; in short, the proposition was cordially approved in both houses. The compiler has now only to hope, that the work will meet the expectation of those generous individuals who interested themselves so generously in its behalf.

The publication of the work has been delayed much beyond what was anticipated, which the compiler regrets. The act in question, as will be seen, requires that the work shall conform to the new revised Statutes, with references to *pages* and *sections*. The publication of this work being therefore required to follow that of the statutes, has necessarily caused the delay, although the work on the statutes, under the superintendence of Mr. Lovell, has been crowded with all possible speed. The compiler would here take occasion to acknowledge his obligation to Mr. Lovell, for the favor of advance sheets of the Revised Statutes, as well as for his generous encouragement and friendly aid while prosecuting his labors in connection with this work.

Some time since, the compiler prepared a work similar to this, for the State of Illinois, of which ten copies were furnished by the State to each town, making, in the aggregate, seven thousand copies. Nearly every county has since ordered an additional supply for distribution among the towns, by which fifteen thousand copies in all have now been disposed of in that State; which proves, in some degree, the utility of a work of this nature.

ELIJAH M. HAINES.

OCTOBER 1, 1858.

### EXPLANATION OF ABBREVIATIONS.

The following explanation is given of the abbreviations frequently occurring in the margin of the following pages:—

R. S., . . . . .	Revised Statutes.
S. L., . . . . .	Session Laws.
R. A., . . . . .	Revisers' Amendment.
Wis., . . . . .	Wisconsin Reports.
Id., . . . . .	The same.

The sections against which the abbreviations "S. L." or "R. A." occur, distinguishes that portion of the matter from the old Revised statutes of 1849, and shows the year in which that portion of the law was enacted, the whole being codified by the revisers in proper manner and being incorporated into the new revised statutes. The abbreviation "Wis." denotes that the section against which it is found has been the subject of adjudication, giving the number of volume, and page.

# LAWS OF THE STATE OF WISCONSIN, 1858.

[Published March 9th, 1858.]

## CHAPTER XVIII.

**AN ACT** to provide for the publication and distribution of the laws of Wisconsin concerning the organization and government of towns.

*The People of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:—*

**SECTION 1.** That the secretary of state be and he is hereby authorized and required to purchase of the compiler, as soon as the same may be ready for delivery, a sufficient number of copies of a work entitled "Laws of Wisconsin, concerning the organization and government of towns, and the powers and duties of town officers and boards of supervisors, with numerous practical forms, by Elijah M. Haines, counselor at law," to supply each organized town in this state with six copies thereof, at a cost at which the same shall be sold to individuals, not exceeding fifty cents a copy: provided, said work shall first be submitted to and approved by the governor, and shall correspond to the provisions of the next revision of the statutes of the state of Wisconsin, and shall have full and proper marginal references to pages and sections of said statutes, and to the decisions of the supreme court made under them.

**SEC. 2.** The secretary of state shall distribute said books among the several counties of the state, allowing to each county a sufficient number to afford six copies to each town therein, in the manner now provided for the distribution of the general laws, and to be distributed among town officers, as the board of supervisors of each county may order.

**SEC. 3.** The secretary of state shall also at the same time purchase one thousand copies of said book, to remain in his office for distribution among the towns that may hereafter become organized.

**SEC. 4.** The governor of this state shall cause said laws of Wisconsin, concerning the organization and government of towns, to be translated into the German, Norwegian and Holland languages, and two thousand copies of the same to be printed in the German language, and one thousand copies of the same to be printed in the Norwegian language, and six hundred copies of the same to be printed in the Holland language, of which copies the superintendent of public property shall send in all cases, at a special request of some member of the legislature, from one to twenty copies printed in the German language to each member of the senate, and from one to ten copies of the same to each member of the assembly, and from one to ten copies printed in the Norwegian language, to each member of the senate, and from one to five copies of the same to each member of the assembly; said copies to be sent by express, for distribution in the several towns of the state, and the balance of said copies shall be kept in his office for distribution among the towns that may hereafter become organized: provided, that said copies shall not cost more than fifty cents per copy, excluding therefrom the cost of translation, which shall in no case exceed twenty-five dollars for translation in either language.

**SEC. 5.** There is hereby appropriated out of any money in the treasury, not otherwise appropriated, a sum of money not exceeding fifty cents per volume, and fifty dollars for translation, for the work above mentioned, when it shall have been delivered to the secretary of state, according to the provisions of this act.

**SEC. 6.** This act shall take effect, and be in force from and after its passage and publication.

F. S. LOVELL,

Speaker of the assembly.

H. H. GILES,

President of the senate, pro tem.

Approved March 5th, 1858.

ALEX. W. RANDALL.

STATE OF WISCONSIN. } ss.  
SECRETARY'S OFFICE.

The secretary of state of the state of Wisconsin, does hereby certify, that the foregoing act has been compared with the original enrolled act deposited in this office, and that the same is a true and correct copy thereof, and the whole of such original.

In witness whereof, I have hereunto set my hand and affixed the great seal of the state, at L. S. the capitol in Madison, this 9th day of March, one thousand eight hundred and fifty-eight.

D. W. JONES,  
Secretary of state.

# NAMES AND RESIDENCE

OF THE STATE OFFICERS, SENATORS, MEMBERS OF THE ASSEMBLY AND THE PRESIDING OFFICERS AND CLERKS OF BOTH BRANCHES OF THE LEGISLATURE, DURING THE YEAR 1858.

## STATE OFFICERS.

Name.	Office.	P. O. Address.	Residence.	County.
Alexander W. Randall,	Governor,	Waukesha,	Waukesha,	Waukesha.
W. H. Watson,	Private Secretary,	Milwaukee,	Milwaukee,	Milwaukee.
E. D. Campbell,	Lieutenant Governor,	La Crosse,	La Crosse.	La Crosse.
D. W. Jones,	Secretary of State,	Madison,	Dane.	Dane.
Gen. J. D. Ruggles,	Assistant Sec. of State,	Madison,	Dane.	Dane.
Samuel D. Hastings.	Treasurer,	Trempleau,	Trempleau.	Trempleau.
Gabriel Bouck,	Attorney General,	Oshkosh,	Winnebago.	Winnebago.
Joel C. Squires,	Bank Commissioner,	Mineral Point,	Iowa.	Iowa.
L. C. Draper,	Sup't Public Instruction,	Madison,	Dane.	Dane.
Horace Rublee,	State Librarian,	Madison,	Dane.	Dane.
Ed. M. McGraw,	State Prison Commis'r,	Sheboygan,	Sheboygan.	Sheboygan.

## MEMBERS OF THE SENATE.

Names of Senators.	Occupation.	P. O. Address.	County.
E. Fox Cook,	Lawyer,	Sheboygan,	Sheboygan.
M. L. Martin,	Lawyer,	Green Bay,	Brown.
J. H. Shulties,	Farmer,	Pt. Washington,	Ozaukee.
D. W. Maxon,	Farmer,	Cedar Creek,	Ozaukee.
A. Greulich,	Editor,	Milwaukee,	Milwaukee.
P. Walsh,	Farmer,	Milwaukee,	Milwaukee.
C. S. Chase,	Lawyer,	Racine,	Racine.
S. R. McClellan,	Physician & Farm.,	Wilnot,	Kenosha.
J. T. Kingston,	Lumberman,	Necedah,	Juneau.
D. Worthington,	Farmer,	Summit,	Waukesha.
H. H. Giles, (Presid't <i>pro tem.</i> )	Farmer,	Stoughton,	Dane.
J. W. Boyd,	Farmer,	Geneva,	Walworth.
P. B. Simpson,	Lawyer,	Shullsburg,	Lafayette.
William Chappell,	Merchant,	Watertown,	Jefferson.
L. W. Joiner,	Farmer,	Wyoming,	Iowa.
N. H. Virgin,	Miller,	Plattville,	Grant.
J. Sutherland,	Book Merchant,	Janesville,	Rock.
A. I. Bennett,	Farmer & Phys'n,	Beloit,	Rock.
T. Clark,	<i>Servant of People.</i>	Manitowoc,	Manitowoc.
E. Pier,	Farmer,	Fond du Lac,	Fond du Lac.
E. Wheeler,	Lawyer,	Oshkosh,	Winnebago.
William E. Smith,	Merchant,	Fox Lake,	Dodge.
S. C. Bean,	Mechanic,	Lake Mills,	Jefferson.
J. H. Warren,	Physician,	Albany,	Green.
M. M. Davis,	Physician,	Portage City,	Columbia.
A. Prondft,	Speculator,	Madison,	Dane.
L. Hanchett,	Lawyer,	Plover,	Portage.
Daniel Mears,	Lumberman,	Oscela Mills,	Polk.
M. L. Kimball,	Lawyer,	Berlin,	Marquette.
W. H. Tucker,	Lawyer,	La Crosse,	La Crosse.

## MEMBERS OF THE ASSEMBLY.

Name.	Occupation.	Post Office.	County.
Frederick S. Lovell, Speaker,	Lawyer,	Kenosha,	Kenosha.
Albert Alden,	Farmer,	Delafield,	Waukesha.
Alvin B. Alden,	Real Estate Agent,	Portage City,	Columbia.
Alexander Ailing,	Farmer,	Sackville,	Ozaukee.
Almon P. Ayres,	Carpenter,	Quincy,	Adams.
James Baker,	Farmer,	East Troy,	Walworth.
Samuel H. Bassinger,	Physician,	Prairie du Sac,	Sauk.
Kiron W. Bemis,	Farmer,	Janesville,	Rock.
Henry K. Belding,	Reaper & Ins. Ag't,	Black Earth,	Dane.
Frederick R. Berg,	Justice of Peace,	Milwaukee,	Milwaukee.
Henry M. Billings,	Farmer,	Constance,	Iowa.
William G. Brown,	Millwright,	Skinner,	Green.
Charles Bracken,	Surveyor,	Mineral Point,	La Fayette.
Zebulon P. Burdick,	Farmer,	Janesville,	Rock.
*Duncan E. Cameron.			
Lucius Cannon,	Merchant's Clerk,	Pepin,	Pepin.
Joseph Carney,	Brick Manufactu'r,	Milwaukee,	Milwaukee.
Samuel Collins,	Clergyman,	Yorkville,	Racine.
James D. Condit,	Druggist,	Sparta,	Monroe.
Edgar Conklin,	Legislator,	Green Bay,	Brown.
Almon D. Cornwell,	Farmer,	Salem,	Kenosha.
Dighton Corson,	Lawyer,	Milwaukee,	Milwaukee.
Alexander Cotzhausen,	Merchant,	Milwaukee,	Milwaukee.
Daniel B. Crandall,	Farmer,	Utica,	Dane.
Charles K. Dean,	Engineer,	Boscobel,	Grant.
Charles W. Detmering,	Farmer,	Newberg,	Washington.
Dominick Devaney,	Lawyer,	Montello,	Marquette.
William Duchman,	Lumberman,	Menasha,	Winnebago.
Andrew J. Dufur,	Farmer,	Iola,	Waupaca.
James B. Dunn,	Farmer,	Manitowoc,	Manitowoc.
Edward G. Dyer,	Physician,	Burlington,	Racine.
Jonathan W. Earle,	Farmer and Law'r,	Pardeeville,	Columbia.
James H. Earnest,	Miner,	New Diggings,	La Fayette.
Elijah Easton,	Farmer,	Walworth,	Walworth.
Orlando Ellsworth,	Farmer,	Milwaukee,	Milwaukee.
Albert W. Emery,	Smelter,	Potosi,	Grant.
Storer W. Field,	Farmer,	Fitchburg,	Dane.
Frank Gault,	Miller,	Pheasant Branch,	Dane.
John Gibb,	Farmer,	Oconomowoc,	Waukesha.
Benjamin F. Gibbs,	Farmer,	Fox Lake,	Dodge.
Hamilton H. Gray,	Farmer and Ast'r,	Darlington,	La Fayette.
James B. Gray,	Lawyer,	Hudson,	St. Croix.
William M. Griswold,	Merchant,	Columbus,	Columbia.
Jonathan C. Hall,	Phys'n and Surg'n,	Marinette,	Oconto.
Henry C. Hamilton,	Manufacturer,	Two Rivers,	Manitowoc.
Michael Hanrahan,	Farmer,	Good Hope,	Milwaukee.
Charles S. Hawley,	Merchant,	Waukesha,	Waukesha.
Samuel M. Hay,	Merchant,	Oshkosh,	Winnebago.
John Hayden,	Shoemaker,	Milwaukee,	Milwaukee.
Oliver P. Hulett,	Farmer,	Menomonee Falls,	Waukesha.
Henry D. Hitt,	Farmer,	Oakfield,	Fond du Lac.
Miles Holmes,	Merchant,	Palmyra,	Jefferson.
George Irish,	Farmer,	Clinton,	Rock.
Narcisse M. Juneau,	Farmer,	Theresa,	Dodge.
Paul Juneau,	Land Agent,	Juneau,	Dodge.
James Kenealy,	Farmer,	Toland's Prairie,	Washington.
James H. Knowlton,	Invest'g Corrupt'n,	Janesville,	Rock.
Frederick H. Kribs,	Farmer,	Beaver Dam,	Dodge.
B. O. Zastrow Kussow,	Farmer,	Cedarburg,	Ozaukee.
Zebulon P. Mason,	Produce Merchant,	Sheboygan,	Sheboygan.
Samuel W. Mather,	Farmer,	Markesan,	Marquette.
Burton Millard,	Lumberman,	Wausan,	Marathon.
William P. McAllister,	Physician,	Omro,	Winnebago.
Francis D. McCarty,	Miller,	Fond du Lac,	Fond du Lac.
Alexander A. McDonell,	Railroad Contract.,	Madison,	Dane.
John McKibbin,	Farmer,	Geneva,	Walworth.
George McWhorter,	Farmer,	Waukesha,	Waukesha.

## PRESIDING OFFICERS AND CLERKS.

Name.	Occupation.	Post Office.	County.
Butler G. Noble,	Druggist,	Whitewater,	Walworth.
Samuel Northrup,	Agriculturist,	Dellona,	Sauk.
Henry Patch,	Farmer,	Patch Grove,	Grant.
Harlow Pease,	Lawyer,	Waterloo,	Jefferson.
William H. Prentice,	Mechanic,	Sheboygan Falls,	Sheboygan.
Henry E. Prickett,	Merchant,	Black River Falls,	Jackson.
Hanmer Robbins,	Farmer,	Platteville,	Grant.
David Roberts,	Farmer,	North Prairie,	Waukesha.
James Robinson,	Merchant,	Chilton,	Calumet.
Charles G. Rodolf,	Merchant,	Orion,	Richland.
Peter Rogan,	Farmer,	Watertown,	Jefferson.
E. L. Runals,	Lawyer,	Ripon,	Fond du Lac.
James B. Savage,	Merchant,	Springville,	Bad Ax.
George W. Selden,	Farmer,	Racine,	Racine.
John W. Sharp,	Merchant,	Door Creek,	Dane.
George C. Smith,	Farmer,	Oakland,	Jefferson.
Perry H. Smith,	Lawyer,	Appleton,	Outagamie.
William H. Starke,	Farmer,	Shopiere,	Rock.
Mitchell Steever,	Lawyer,	Milwaukee,	Milwaukee.
John Steiner,	Farmer,	Woodland,	Dodge.
Levi Sterling,	Horticulturist,	Mineral Point,	Iowa.
William S. Tuttle,	Farmer,	New Fane,	Fond du Lac.
Abram H. Van Wie,	Farmer,	Onion River,	Sheboygan.
James E. Vinton,	Lecturer,	Albany,	Green.
Joseph Wagner,	Farmer,	Dotyville,	Fond du Lac.
Hermion Warner,	Real Estate Agent,	Racine,	Racine.
† William C. Webb,	Lawyer,	Wautoma,	Waushara.
Paul A. Weil,	Farmer,	Richfield,	Washington.
Edward J. Williams,	Farmer,	Elba,	Dodge.
Henry D. York,	Druggist,	Hazel Green,	Grant.

## PRESIDING OFFICERS AND CLERKS.

Name.	Office.	P. O. Address.	County.
E. D. Campbell,	President of Senate,	La Crosse,	La Crosse.
F. S. Lovell,	Speaker of Assembly,	Kenosha,	Kenosha.
J. L. V. Thomas,	Chief Clerk Senate,	Janesville,	Rock.
S. H. Lee,	Assistant do. do.	Racine,	Racine.
L. H. D. Crane,	Chief Cl'k Assembly,	Dodgeville,	Iowa.
E. B. Quiner,	Assistant do. do.	Watertown,	Jefferson.

# LAWS OF WISCONSIN

## CONCERNING THE ORGANIZATION AND GOVERNMENT OF TOWNS.

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### CHAPTER VII.

R. S. 1858.  
CHAP. 7.  
p. 99.

OF GENERAL AND SPECIAL ELECTIONS; OF THE MANNER OF CONDUCTING THE SAME, AND OF THE CANVASS.

#### QUALIFICATIONS AND DISABILITIES OF ELECTORS.

**SECTION 1.** Every male person of the age of twenty-one years or upward, belonging to either of the following classes, who shall have resided in the state for one year next preceding any election, shall be deemed a qualified voter at such election:—

1. White citizens of the United States.
2. White persons of foreign birth, who shall have declared their intention to become citizens, conformably to the laws of the United States on the subject of naturalization.
3. Persons of Indian blood, who have once been declared by law of congress to be citizens of the United States, any subsequent law of congress to the contrary notwithstanding.
4. Civilized persons of Indian descent, not members of any tribe.

**SECTION 2.** No person under guardianship, *non compos mentis*, or insane, shall be qualified to vote at any election; nor shall any person convicted of treason, felony, or bribery, unless restored to civil rights; nor shall any person, who, being an inhabitant of this state, may hereafter be engaged, directly or indirectly, in a duel, either as principal or accessory, be permitted to vote at any election; nor shall any person who shall have made or become directly or indirectly interested in any bet or wager, depending upon the result of any election at which he shall offer to vote, be permitted to vote at such election.

#### GENERAL ELECTIONS.

**SECTION 3.** A general election shall be held in the several towns and wards in this state, on the Tuesday next succeeding the first Monday in November in each year, at which time shall be chosen so many of the following officers as are by law to be elected in such year; that is to say, a governor, lieutenant governor, secretary of state, treasurer, attorney general, state superintendent,

bank comptroller, state prison commissioner, senators, members of assembly, representatives in congress, electors of president and vice-president, and the following county officers, to wit: clerks of the circuit courts, sheriffs, registrars of deeds, district attorneys, clerks of the boards of supervisors, county treasurers and coroners, and all other state and county officers not herein enumerated or otherwise provided for.

#### SPECIAL ELECTIONS.

Special elections  
when held.

SECTION 4. Special elections may be held in the following cases, and for the election of the following officers:—

1. When there has been no choice at a general election of a representative in congress, senator, member of assembly, or of any county officer who should properly have been chosen at such general election.

2. When the right of office of a person elected to the office of senator, member of assembly, or to either of the said county offices, shall cease before the commencement of the term of service for which he shall have been elected.

3. When a vacancy shall occur in either of the said county offices, except in those of county treasurer, clerk of the circuit court, and clerk of the board of supervisors, after the commencement of the term of service, and more than three months before the next general election.

4. When a vacancy occurs in the office of senator or member of assembly, after the last day of December in any year, and before the first day of February next following.

5. If a vacancy, proper to be supplied at the general election, shall not have been supplied at the general election next succeeding the happening thereof, a special election to supply such vacancy shall then be held.

6. When in any other case of a vacancy, not particularly provided for in this section, the governor shall in his discretion direct.

Vacancies may be  
supplied at gen-  
eral election;  
when governor  
and lieutenant  
governor to be  
chosen.

SECTION 5. A vacancy in either of the offices named in the third section of this chapter, which shall not have been supplied by an election before the general election next succeeding the happening thereof, may be supplied at such election; but no election shall take place for governor or lieutenant governor except at the general election held in the last year of their constitutional term of office.

Special elections,  
how conducted  
and when held.

SECTION 6. Special elections shall be conducted, and the result thereof canvassed and certified, in all respects as near as practicable, in like manner as general elections, except as otherwise directed; and no special election shall be held within thirty days next preceding a general election.

Elections where  
held.

SECTION 7. All general and special elections shall be held at the place in each town where the last town meeting was held, or at such other place therein as shall have been ordered at a previous meeting, or when there has been no such previous meeting, then at such place as shall be directed in the act or proceeding by which the town was organized: but nothing in this section contained shall prevent the holding of two or more polls in one town, when the

same shall be ordered by the inspectors of election as hereinafter provided.

SECTION 8. Whenever it shall become impossible or inconvenient to hold an election at the place designated therefor, the board of inspectors, after having assembled at, or as near as practicable to such place, and before receiving any votes, may adjourn to the nearest convenient place for holding the election, and at such adjourned place forthwith proceed with the election.

When place of holding may be adjourned.

SECTION 9. Upon adjourning any election, as provided in the preceding section, the board of inspectors shall cause proclamation thereof to be made, and shall station a constable or some other proper person, at the place where the adjournment was made, to notify all electors arriving at such place, of the adjournment and the place to which it was made.

Proclamation to be made, &c.

#### NOTIFYING ELECTIONS.

SECTION 10. The secretary of state shall, between the first day of July and the first day of September in each year in which a governor, lieutenant governor, secretary of state, treasurer, attorney general, and state superintendent, or representatives in congress, are to be elected for a full term of office, or in which electors of president and vice-president are to be elected, make out and cause to be delivered to the sheriff of each county a notice in writing, stating that at the next general election, the aforementioned state officers, and electors of president and vice-president, and a representative in congress for the district to which such county shall belong, are to be elected, or so many of such officers as are then to be chosen.

Notice of general elections to be given by secretary.

SECTION 11. If any vacancy shall exist in the offices either of secretary of state, treasurer, attorney general, state superintendent, state senator, or representative in congress, proper to be supplied at the ensuing general election, one month before such election, the secretary of state, or in case of a vacancy in such office, then the person officiating as such, shall, thirty days at least before such election, give notice in writing to the sheriff of each county in the state, when the vacancy is in a state office; or in case of such vacancy in a district, then to the sheriff of each county therein, specifying the cause of such vacancy, the name of the officer in whose office it occurred, and the time when his term of office will expire.

1b. of special elections.

SECTION 12. The secretary of state shall, between the first day of July and the first day of September in each year in which the term of office of any state senator in any district will expire, make and cause to be delivered to the sheriff of the county comprising such district, or to the sheriff of each county which shall form a part thereof, a notice in writing, specifying the number of the district, and the name of the senator whose term of service will so expire, and whose successor is to be elected at the next general election.

Secretary to notify sheriffs of vacancy in office of senator.

SECTION 13. The secretary of state shall cause a copy of each notice issued by him, and of each writ of election issued by the governor for a special election, to be published in a paper printed

Publication of notices and writs of election by secretary.



at the seat of government, once in each week from the date of such notice or writ, until the election to which it shall refer.

Special elections for county officers, to be ordered by sheriff.

SECTION 14. All special elections for county officers, and the filling of all vacancies in county offices at a general election, shall be ordered by the sheriff of the county, which order shall be countersigned by the clerk of the board of supervisors; in all other cases of special elections, they shall be ordered by the governor.

Orders and writs for elections, what to specify, and to whom delivered.

SECTION 15. Every order or writ issued for a special election shall specify the county or district in which such election is to be held, how the vacancy occurred, the name of the officer in whose office it occurred, the time when his term of office will expire, and the day on which such election is to be held; which shall not be less than twenty nor more than forty days from the date of the order or writ; and the same shall be forthwith delivered to the sheriff of the county, or in case of vacancy in a district composed of more than one county, then to the sheriff of each county in such district.

Duty of sheriff on receiving notices.

SECTION 16. The sheriff, on receiving either of the notices directed in this chapter to be sent to him, shall forthwith cause a notice in writing to be delivered to the town clerk of each town, and to one of the inspectors of election in each ward in any city of his county; or if the vacancy be in an assembly or senate district within his county, then such notice shall be delivered to such officer in each ward or town in such district; which notice shall contain in substance the notices so received by such sheriff.

Duty of town clerk and inspectors previous to general elections, and on receiving notices.

SECTION 17. The town clerk of every town, or inspectors in any ward of any city, ten days previous to any general election, or on receiving either of the notices directed in this chapter to be delivered to him, shall give notice in writing, under his hand, to the electors of his town or ward, of the time and place at which such election is to be held, and of the officers to be chosen; and if the notice is for a general election, it shall state whether any of the officers then to be chosen are to fill vacancies, and the names of the last incumbents of the offices in which vacancies exist; and such town clerk or inspectors shall cause such notices to be posted up conspicuously in at least five of the most public places in his town or ward.

When office of sheriff vacant, clerk of supervisors to act.

SECTION 18. Whenever in any county the office of sheriff shall be vacant, and there shall be no person therein authorized to perform his duties, the clerk of the board of supervisors of such county shall receive, and make out and deliver the notices of the election, in this chapter required to be received, made out, and delivered by such sheriff.

If vacancy in the office of senator or member of assembly, duty of clerk of supervisors.

SECTION 19. Whenever a vacancy shall occur in the offices of either state senator or member of assembly, otherwise than by resignation, it shall be the duty of the clerk of the board of supervisors of the county in which the senator or member of assembly whose office is vacant shall have resided at the time of his election, to transmit without delay a notice of such vacancy to the governor.

#### MANNER OF CONDUCTING GENERAL ELECTIONS.

Supervisors and

SECTION 20. The supervisors of each town shall be the inspect-

ors of elections in such town, and the aldermen in each ward of any city shall be the inspectors of elections in such ward. aldermen to be inspectors of election.

SECTION 21. In the case of the death, absence, or refusal to act, of any or all of the inspectors, the electors present may choose, *viva voce*, from the qualified electors of the town or ward, such number, as together with the inspector or inspectors present, if any, will constitute a board of three, and the persons so chosen shall be authorized to act as inspectors at that election. In case of absence, electors to choose inspectors.

SECTION 22. The town clerk, if present, shall act as clerk of the election, and before the opening of the polls, the inspectors at each poll shall appoint another competent person to be clerk of the election; and if the town clerk be absent, the board shall appoint two such clerks; the inspectors in each ward in any city shall appoint two clerks of election; but no person shall act as clerk of the election who is not a qualified elector of the town or ward in which he is appointed. Town clerk to act as clerk of the polls, and inspectors to appoint one or more other clerks.

SECTION 23. Whenever, in the opinion of the inspectors of election of any town, more than one election poll will be necessary for the convenience of the electors, at any general or special election, they are hereby authorized to designate a place or places where another or other polls shall be held, giving at least eight days' notice thereof, by posting up notices in five of the most public places in such town; at which place or places so designated, the inspectors and clerks of such poll or polls shall be chosen, as provided in the last two preceding sections, and they shall be authorized to act as inspectors and clerks of such election. Inspectors may designate other places for holding polls.

SECTION 24. Whenever the chairman of the town board of supervisors is present, he shall be chairman of the election board; but if he be absent, such one of their number as the inspectors shall appoint shall be chairman of the board. Chairman of the board.

SECTION 25. Previous to receiving any votes, the inspectors and clerks of election shall severally take an oath, or affirmation, that they will support the constitution of the United States, and the constitution of the state of Wisconsin, and will perform the duties of inspectors (or clerk, as the case may be) of election according to law, and will studiously endeavor to prevent all fraud, deceit, or abuse in conducting the same. Said oath or affirmation shall be in writing, shall be subscribed by the persons taking the same, and may be administered by any person authorized to administer oaths, or by either of said inspectors; and shall be annexed to and returned with the poll book to the clerk of the board of supervisors. Inspectors and clerk to take oath, and same to be annexed to poll book.

SECTION 26. The polls of the election shall be opened at nine o'clock in the forenoon, or as soon thereafter as may be, on the day of election, and shall be kept open until sundown in the afternoon of the same day; but the board may adjourn the polls at twelve o'clock noon, for one hour. Polls when opened and closed.

SECTION 27. The inspectors shall cause proclamation to be made of the opening and closing of the polls, and of each adjournment; and at the opening of the polls in the forenoon, the inspectors shall give notice thereof, if any adjournment is to take place. Proclamation to be made, and notice of adjournment to be given.

Inspectors to  
open and empty  
ballot boxes.  
S. L. 1867, ch. 86.

**SECTION 28.** It shall be the duty of the inspectors of the election, or one of them, immediately before proclamation is made of the opening of the polls, to open the ballot boxes in the presence of the people there assembled, and turn them upside down, so as to empty them of every thing that may be in them, and lock them; and they shall not be reopened until for the purpose of counting the ballots therein, at the close of the polls.

Elector to deliver  
in person a single  
ballot.

**SECTION 29.** Each elector shall publicly, at the polls where he offers to vote, deliver in person to one of the inspectors of election, a single ballot, or piece of paper, on which shall be written or printed the names of the persons voted for, with a pertinent designation of the office which he, or they, may be intended to fill; but no elector shall vote except in the township or ward in which he actually resides.

Id.

Rules governing  
inspectors in de-  
termining resi-  
dence of elector.

**SECTION 30.** The inspectors of election, in determining the residence of a person offering to vote, shall be governed by the following rules, so far as they may be applicable.

Id.

*First.* That place shall be considered and held to be the residence of a person, in which his habitation is fixed, without any present intention of removing therefrom, and to which whenever he is absent he has the intention of returning.

*Second.* A person shall not be considered or held to have lost his residence, who shall leave his home and go into another state, or county, town, or ward of this state, for temporary purposes merely, with an intention of returning.

*Third.* A person shall not be considered to have gained a residence in any county, town, or ward of this state, into which he shall have come for temporary purposes merely.

*Fourth.* If a person remove to another state with an intention to make it his permanent residence, he shall be considered and held to have lost his residence in this state.

*Fifth.* If a person remove to another state with the intention of remaining there an indefinite time, and as a place of present residence, he shall be considered and held to have lost his residence in this state, notwithstanding he may entertain an intention to return at some future period.

*Sixth.* The place where a married man's family resides shall generally be considered and held to be his residence; but if it is a place of temporary establishment for his family or for transient objects, it shall be otherwise.

*Seventh.* If a married man has his family fixed in one place, and he does his business in another, the former shall be considered and held to be the place of his residence.

*Eighth.* The mere intention to acquire a new residence, without the fact of removal, shall avail nothing; neither shall the fact of removal without the intention.

*Ninth.* If a person shall go into another state, and while there exercise the right of a citizen by voting, he shall be considered and held to have lost his residence in this state.

All the names to  
be on one ballot.

**SECTION 31.** The names of all persons voted for by an elector, at any general or special election, shall be on one ballot.

When two mem-

**SECTION 32.** If at a general election there shall be a vacancy

to be supplied in the office of representative to congress, and at the same election a representative to congress is to be elected for a full term, the ballots shall designate the congress for which each person is intended to be chosen.

**SECTION 33.** It shall be the duty of each inspector of the election, to challenge every person offering to vote, whom he shall know or suspect not to be duly qualified as an elector.

**SECTION 34.** If a person offering to vote is challenged as unqualified, by any elector, or by one of the inspectors of the election, one of the inspectors shall tender to him the following oath or affirmation :

You do swear [or affirm] that you will fully and truly answer all such questions as shall be put to you touching your place of residence and qualifications as an elector of this election.

*First.* If the person be challenged as unqualified, on the ground that he is not a citizen, and hath not declared his intention to become a citizen, the inspectors, or one of them, shall put the following questions:—

1. Are you a citizen of the United States? If no, then—
2. Have you declared your intention to become a citizen of the United States, conformably to the laws of the United States?
3. When and where did you declare your intention to become a citizen of the United States?

*Second.* If the person be challenged as unqualified on the ground that he has not resided in this state for one year immediately preceding the election, the inspectors, or one of them, shall put the following questions:—

1. How long have you resided in this state immediately preceding this election?
2. Have you been absent from this state within the year immediately preceding this election? If yes, then—
3. When you left did you leave for a temporary purpose, with the design of returning, or for the purpose of remaining away?
4. What state or territory did you regard as your home while absent?
5. Did you, while absent, vote in any other state or territory?

*Third.* If the person be challenged as unqualified on the ground that he is not a resident of the county, town, or ward where he offers his vote, the inspectors, or one of them, shall put the following questions:—

1. When did you last come into this county, town, or ward?
2. Did you come for a temporary purpose merely, or for the purpose of making it your home?
3. Did you come into this county for the purpose of voting in this county?
4. Are you now an actual resident of this county or ward, and what is the particular description, name, and location of your place of residence?

*Fourth.* If the person be challenged as unqualified on the ground that he is not twenty-one years of age, the inspectors, or one of them, shall put the following question:—

1. Are you twenty-one years of age to the best of your knowledge and belief?

The inspectors of the election, or one of them, shall put all other questions to the person challenged, under the respective heads

bers of congress  
elected, how bal-  
lots shall design-  
ate each.

Inspector to  
challenge.  
S. L. 1857, ch. 85.

Proceedings of  
inspectors in case  
of challenge.  
Id.

When not being  
a citizen is  
ground of chal-  
lenge.

When challenged  
on ground of re-  
sidence in state.

When challenged  
on the ground of  
residence in  
county.

When challenged  
on ground of age.

aforesaid, as may be necessary to test his qualifications as an elector at that election.

If person challenged refuse to answer, his vote to be rejected.

S. L. 1857, ch. 86.

If challenge be not withdrawn, oath to be administered.

Id.

SECTION 35. If the person challenged shall refuse to answer fully any of the foregoing questions, or any other question touching his qualifications as an elector at that election, the inspectors shall reject his vote.

SECTION 36. If the challenge be not withdrawn after the person offering to vote shall have answered the questions put to him as aforesaid, one of the inspectors shall tender to him the following oath:—

You do solemnly swear [or affirm, as the case may be] that you are twenty-one years of age; that you are a citizen of the United States, [or that you have declared your intention to become a citizen, conformably to the laws of the United States on the subject of naturalization;] that you have resided in this state one year next preceding this election; that you are now a resident of this town, [or ward, as the case may be;] that you have not voted at this election, and that you have not made any bet or wager, or become directly or indirectly interested in any bet or wager, depending upon the result of this election.

If person refuse the oath vote rejected.

Id.

Memorandum in case voter is "sworn."

Id.

If oath taken, vote to be received.

Ballot box to be provided.

SECTION 37. If any person shall refuse to take the oath or affirmation so tendered, his vote shall be rejected.

SECTION 38. Whenever any person's vote shall have been received, after having taken the oath provided in the thirty-sixth section of this chapter, it shall be the duty of the clerks of the election to write on the poll book, at the end of such person's name, "sworn."

SECTION 39. If any person so offering to vote shall take such oath, his vote shall be received.

SECTION 40. There shall be provided and kept by the town clerk of each town, at the expense of such town, and by the aldermen of each ward in any city, at the expense of such city, a suitable ballot box with a lock and key.

Opening in same.

SECTION 41. There shall be an opening through the lid of such box, of no larger size than shall be sufficient to admit a single closed ballot.

Ballots not to be opened or examined.

SECTION 42. When a ballot shall be received, one of the inspectors, without opening the same, or permitting it to be opened or examined, shall deposite it in the box.

Each clerk to keep poll list.

SECTION 43. Each clerk shall keep a poll list, which shall contain the names of all the persons voting at such election.

To compare and correct same at each adjournment.

SECTION 44. At each adjournment of the poll, the clerks shall, in the presence of the inspectors, compare their respective poll lists, compute and set down the number of votes, and correct all mistakes that may be discovered according to the decision of the board, until such poll lists shall be made in all respects to correspond.

Box, lists, and key, how kept.

SECTION 45. The ballot box shall then be opened and the poll lists placed therein, and such box shall then be locked, and a covering with a seal placed on the opening in the lid of such box, so as entirely to cover the same, and the key delivered to one of the inspectors, and the box to another, to be designated by the board.

Key and box, by whom kept, and to whom returned.

SECTION 46. The inspector having the key shall keep it in his own possession, and deliver it again to the board at the next opening of the poll; and the inspector having the box shall carefully keep it without opening, or suffering it to be opened, or the seal

thereof to be broken or removed, and shall publicly deliver it in that condition to the board of inspectors at the next opening of the poll, when the seal shall be broken, the box opened, the poll list taken out, and the box again locked.

SECTION 47. It shall be the duty of each inspector to challenge every person offering to vote, whom he shall know or suspect not to be duly qualified as an elector; and the board of inspectors shall possess full authority to maintain regularity and order, and to enforce obedience to their lawful commands, during an election, and during the canvass and estimate of the votes. Inspectors to challenge and maintain order.

SECTION 48. If any person shall refuse to obey the lawful commands of the inspectors, or by disorderly conduct in their presence or hearing, shall interrupt or disturb their proceedings, they may order any constable or other person to take him into custody during the election. Disorderly persons to be taken into custody.

SECTION 49. As soon as the poll of the election shall be finally closed, the inspectors shall proceed immediately to canvass the votes given at such an election, and continue without adjournment until completed. Canvass when to be made, to be without adjournment.

SECTION 50. The canvass of votes shall be made publicly in the presence of any person desiring to attend the same, and the result thereof shall be publicly announced by the inspectors at the close thereof, and they shall at such announcement declare the whole number of votes cast at such election, the number given respectively for each candidate or proposition voted for at such election. Canvass to be public and result publicly declared. S. L. 1867, ch. 86.

SECTION 51. The canvass shall commence by a comparison of the poll lists from the commencement and a correction of any mistakes that may be found therein, until they shall be found or made to agree. The box shall then be opened, and the ballots contained therein taken out and counted by the inspectors, unopened, except so far as to ascertain whether each ballot is single, and if two or more ballots shall be found so folded together as to present the appearance of a single ballot, they shall be laid aside until the count of the ballot is completed; and if upon a comparison of the count and the appearance of such ballots, a majority of the board shall be of opinion that the ballots thus folded together were voted by one elector, they shall be destroyed. Canvass how to be conducted.

SECTION 52. If the ballots in the box shall be found to exceed in number the whole number of votes on the poll lists, they shall be replaced in the box, and one of the inspectors shall publicly draw out and destroy therefrom so many ballots unopened, as shall be equal to such excess. Excess of ballots to be destroyed.

SECTION 53. The ballots and poll lists agreeing, or being made to agree, the board shall then proceed to count and ascertain the number of votes. Board to count the votes.

SECTION 54. The canvass being completed, the inspectors shall draw up a statement of the result in writing, and cause a duplicate thereof to be made; which statement and duplicate they shall certify to be correct, and subscribe with their names. Statement of result to be made in writing.

SECTION 55. Such statement shall set forth in words at length, the whole number of votes given for each office at such What to contain.

election, the names of the persons for whom such votes were given, and the number of votes so given for each person.

Statements to be delivered to town clerk and chairman of supervisors.

SECTION 56. One of said statements shall forthwith be delivered to the town clerk to be filed and preserved by him, or if made in any ward of a city, then to the clerk of such city for the like purpose; and the other, together with one of the poll lists, shall be carefully enclosed, sealed up, and directed to the clerk of the board of supervisors of the proper county, and delivered to the chairman of the supervisors of the town, or such one of said supervisors as shall attend the next annual meeting of the county board of supervisors; and such officer to whom such statement and poll list shall be so delivered, shall, within seven days after the election, deliver the same, with the seals and envelopes unbroken, to such clerk, without charge for mileage, when they receive pay for mileage as members of the county board.

Supervisors to deliver same to clerk of the board.

Rejected ballots to be preserved and the others destroyed.

SECTION 57. The inspectors shall carefully envelope and preserve all ballots rejected as defective, and deliver the same, together with the other poll list, to the town or city clerk, as the case may be, to be filed in his office; all the other ballots shall then be destroyed, and the board of inspectors shall be dissolved.

#### COUNTY CANVASS AND PROCEEDINGS THEREON.

County canvass, when to be made and by whom.

SECTION 58. On the Tuesday next following the election, the clerk of the board of supervisors shall take to his assistance two justices of the peace of his county, who, together with such clerk, shall constitute the county board of canvassers, and proceed to open said returns, and make an estimate and statement of the votes, as follows:—

Separate statement of the votes given to be made.

They shall make a separate statement, written out in words at length, containing the whole number of votes given in such county for the offices of governor, lieutenant governor, secretary of state, treasurer, attorney general, state superintendent, bank comptroller, state prison commissioner, and representative in congress; the names of the persons to whom such votes were given, and the number of votes given to each; another similar statement of the votes given for electors of president and vice-president; another, of the votes given for senator, when the county alone does not constitute a senate district; another, of the votes given for members of assembly, when the county alone does not constitute an assembly district; another, of the votes given for county officers; and another, of the votes given for senators and members of assembly, when the county constitutes one or more senate or assembly districts, specifying the number of votes for each person for senator and member of assembly in each such district respectively.

Same to be certified and signed by board, and filed and recorded.

SECTION 59. Each statement shall be certified as correct, and attested by the signatures of the said county board of canvassers, and filed in the office of the clerk of the board of supervisors, and the same shall be recorded by him in a suitable book to be provided and kept in his office.

SECTION 60. They shall then determine the persons who have been, by the greatest number of votes, elected to the several county offices, and members of the senate and assembly, when the county constitutes one or more senate or assembly districts; and such determination shall be reduced to writing, certified as correct, and attested by the signatures of the said clerk and justices, and be annexed to the statement of votes given for such officers respectively, and filed and recorded by said clerk with the same.<sup>1</sup>

Board to determine who are elected county officers, &c.; their certificate to be filed and recorded.

4 Wis. 420.

SECTION 61. The said clerk shall immediately make out, in pursuance of the determination of such board of canvassers, a certificate of election for each person having the greatest number of votes for any county office, or for member of the senate or assembly, when the county constitutes one or more senate or assembly districts, and deliver the same to such person upon his making application therefor.

Certificates of election to be made and delivered by clerk.

SECTION 62. The said board shall, without delay, make a duplicate statement of the votes given for senator, when the county does not alone constitute a senate district, and deliver the same to the clerk of the board of supervisors of the county, to be by him delivered to the senatorial district canvassers; said board shall also make a duplicate statement of the votes given for member of the assembly when the county does not alone constitute an assembly district, and deliver the same to the said clerk, to be by him delivered to the assembly district canvassers.

Duplicate statements of votes for senator and member of assembly when to be made.

SECTION 63. Of the statement and certificate of the votes given for the offices of governor, lieutenant governor, secretary of state, treasurer, attorney general, state superintendent, and representative in congress, or either of them, the clerk of the board of supervisors shall prepare three certified copies under his signature, and sealed with his seal of office. Of these copies, he shall, within three days next after the county canvass, send by mail one to the governor, one to the secretary of state, and one to the state treasurer.

Copies of statement of votes for state officers to be made and sent by clerk.

SECTION 64. He shall also transmit by mail to the secretary of state, within thirty days after any general election, a list of the names of persons elected in the county as members of the senate and assembly, and also a list of all the county officers elected in such county at such election.

Clerk to transmit names of members, and of county officers to secretary.

SECTION 65. The clerk of the board of supervisors of each county, immediately after he shall receive from the board of county canvassers a certified statement of the votes given for electors

To make and transmit three copies of statement of votes

<sup>1</sup> Where the vote of a town is rejected by the county canvassers, because no poll list, with the oath of the inspectors of election, accompanied the statement of votes made up and returned to the clerk of the county board of supervisors, the statement being regular in all other respects, and delivered by and to the proper officers within the time prescribed by law, the testimony of the town clerk is competent to show by the records kept in his office that the election was regularly notified and conducted, and that the votes were ascertained and canvassed according to law, and also to show the number of votes cast for the different candidates for the (disputed) office in that town.

The chairman of the town board of supervisors of the town whose vote is rejected for the above reason is a proper witness to show that he acted as one of the inspectors of election, that such inspectors were duly sworn before the polls were opened, and that the election was conducted in conformity to the statute.

The duties of the canvassing boards are in the main ministerial.

In an information in the nature of a *quo warranto*, to test the fact of election between the parties claiming the same, the court is bound to rectify mistakes and omissions of the canvassing boards.—[*Attorney General ex rel. Carpenter v. Ely*, 4 Wis. R., 420.



given for elect-  
ors.

of president and vice-president, shall make out three copies thereof, certified under his hand and seal of office to be correct, and shall forthwith send by mail one of such copies to the governor, one to the secretary of state, and the other to the state treasurer.

Vote on amend-  
ment of constitu-  
tion how to be  
taken, certified,  
and returned.

SECTION 66. Whenever any amendment shall have been proposed to the constitution of this state, and agreed to, and submitted to the people, pursuant to the provisions of the first section of the twelfth article of the constitution, if the vote thereon shall be required to be taken at the general election, the votes of the electors for and against such amendment shall be taken, canvassed, certified, and recorded, and certified copies of the statements thereof shall be made and transmitted by the clerks of the boards of supervisors, in the several counties, to the governor, secretary of state, and treasurer, at the same time and in the same manner as the votes for state officers are by law to be taken, canvassed, certified, and recorded, and statements thereof are to be certified and transmitted.

When vacancy  
in office of clerk  
of supervisors, or  
his inability to  
serve, who to act.

SECTION 67. In case of vacancy in the office of clerk of the board of supervisors in any county, or when, in case of absence, sickness, or other inability, such clerk cannot perform any of the duties required to be performed by him in this chapter, then the clerk of the circuit court in such county, or if there be no such clerk, or if he be unable to perform such duties, then the chairman of the board of county supervisors of such county, shall perform the duties so required to be performed by the clerk of the board of supervisors, and shall be subject to the same penalties for any violation of such duties, as said clerk.

County canvass  
may be adjourn-  
ed.

SECTION 68. If, on the day appointed for the county canvass, there should fail to be a full attendance of the board, the same may be adjourned until the next day, when the canvass shall proceed.

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#### MISCELLANEOUS PROVISIONS.

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No civil process  
to be served on  
elector during  
election day.

SECTION 101. During the day on which any general, special, town, or charter election shall be held, no civil process shall be served on any elector entitled to vote at such election.

Person having  
highest number  
of votes elected.

SECTION 102. In all elections for the choice of any officers, unless it is otherwise expressly provided, the person having the highest number of votes for any office shall be deemed to have been elected to that office.

Compensation of  
clerks and in-  
spectors.

SECTION 103. In all elections held under the provisions of this chapter, the inspectors and clerks of election in each town and ward shall be allowed a reasonable compensation for their services at such elections, to be paid by such town or ward.

Same of county  
canvassers and  
clerks of boards  
of supervisors.

SECTION 104. Each county canvasser and clerk of the board of supervisors shall receive such reasonable compensation for his services while employed in the county canvass, or any duties relating thereto, as shall be allowed by the board of supervisors of his county, to be paid out of the county treasury.

\* \* \* \* \*

SECTION 107. Whenever it shall satisfactorily appear that any person has received a plurality of the legal votes cast at any election, for any office, the canvassers shall give to such person a certificate of election, notwithstanding the provisions of law may not have been fully complied with, in noticing or conducting the election, or canvassing or returning the votes, so that the real will of the plurality may not be defeated by any informality.

Certificate of election to be delivered to persons receiving plurality of vote.

SECTION 108. It shall be the duty of the secretary of state to cause a sufficient number of blank statements of the votes cast for state and county officers at the general elections in this state, to be printed and distributed to the clerks of the boards of supervisors of the several counties in this state, on or before the first day of August, in each year.

Secretary of state to furnish blank statements.

S. L. 1857, ch. 33.

SECTION 109. There shall be two separate forms of such statements; one for the use of the towns and one for the use of the wards of the several cities in this state; such blanks shall contain the necessary oaths and certificates of the inspectors and clerks of elections, and shall also contain a note with directions for filling such blanks.

Forms of statements and what they must contain.

SECTION 110. Such blank statements shall be distributed to the several town and city clerks in each county by the sheriffs of the several counties, at the time that the notices for the general elections are served upon such town and city clerks, without additional fees or charges therefor.

To whom statements to be distributed.

Id.

SECTION 111. It shall be the duty of such town and city clerks to furnish the inspectors of election, in their respective towns and wards, with such blank statements, at or before the time of opening the polls on the day of the general election. And the said inspectors of election and the clerks of election shall use such blanks in all statements of the result of such elections which are required to be made by law.

Duty of clerk to furnish statement to inspectors.

Id.

SECTION 112. No election or election returns shall be in any manner invalidated in consequence of the failure to use any blanks provided for by this chapter.

Election not invalidated by failure to use statements.

\* Id.

## CHAPTER XIII.

### OF COUNTIES AND COUNTY OFFICERS.

R. S. 1858,  
CHAP. 18,  
p. 146.

SECTION 1. All the rights, powers, duties, privileges, and immunities of the several counties shall remain as now established, until the same shall be altered by law.

Rights, &c., of counties.

SECTION 2. Each organized county within this state shall be a body politic and corporate, and as such shall be empowered to act for the following purposes, to wit:—

Each county to be a body politic, and their powers as such.

1. To sue and be sued.

2. To purchase and hold real and personal estate for the use of the county, and lands sold for taxes as provided by law.

3. To sell and convey any real or personal estate owned by the county, and make such orders respecting the same as may be deemed conducive to the interest of the inhabitants.

4. To make all contracts and to do all other acts in relation to the property and concerns of the county necessary to the exercise of its corporate or administrative powers.

5. To exercise such further powers as shall be specially conferred by law.

Counties organized for county and not judicial purposes.

SECTION 3. Counties organized for county, and not judicial purposes, shall be governed by the provisions of this chapter so far as they shall be applicable, subject, however, to the provisions of their organic acts; and such counties shall for judicial purposes be deemed to be within the limits and part of the county to which they are attached.

Portions of state not organized into counties.

SECTION 4. Such portions of the state, not organized into counties, as are annexed to any organized county, shall for judicial and other purposes be deemed to be within the limits and part of the county to which they are annexed.

Real and personal estate, when deemed property of county.

SECTION 5. All real and personal estate heretofore conveyed, or which shall hereafter be conveyed, by any form of conveyance, to any county, or the inhabitants thereof, or to any person or persons for the use and benefit of such county or its inhabitants, shall be deemed to be the property of such county; and all such conveyances shall have the same force and effect as if they had been made to the inhabitants of such county by their respective corporate names.

Corporate powers of board.

SECTION 6. The powers of a county, as a body politic and corporate, can only be exercised by the board of supervisors thereof or in pursuance of a resolution by them adopted.

Property of county to be held by clerk of the board.

SECTION 7. The property of the several counties shall be held by the clerks of the boards of supervisors of such counties in the name of the county, and shall be disposed of by the said clerks under the direction of the said county board.

The board of supervisors may direct sale and conveyance of real estate, &c.

The board of supervisors of each county may, by their order of record, direct the clerk of said board to sell and convey any real estate of their county not donated for any special purpose; and all deeds made on behalf of said county by the clerk of the board of supervisors of said county, under his hand and official seal and duly acknowledged by him, shall be sufficient to convey all the rights, title, interest, and estate which the county may then have in and to the land so conveyed.

S. L. 1851, ch. 334.

\* \* \* \* \*

#### OF COUNTY BUILDINGS.

Each county to provide county buildings.

SECTION 16. Each county organized for judicial purposes shall at its own expense provide a suitable court house and a suitable and sufficient jail, and fire proof offices and other necessary county buildings, and keep the same in good repair.

If prisoner escape

SECTION 17. In case of the escape of any prisoner by reason

of the insufficiency of the jail, whereby the sheriff or any other person shall be made liable to any party at whose suit such prisoner was committed or to whose use any forfeiture was adjudged against him, the county shall reimburse and pay all sums of money recovered of the sheriff or such other person by such party, by reason of such escape.

from insufficiency of jail, county liable.

#### OF LEGAL PROCEEDINGS IN FAVOR OF AND AGAINST COUNTIES.

SECTION 18. Whenever any controversy or cause of action shall exist between any of the counties of this state, or between any county and the state, or an individual or individuals, such proceedings shall be had for the purpose of trying and finally settling such controversy, and the same shall be conducted in like manner, and the judgment therein shall have the like effect, as in actions or proceedings between individuals and corporations.

Legal proceedings in which county concerned, to be conducted same as between individuals.

SECTION 19. In all such actions or proceedings by or against a county, the name in which the county shall sue or be sued shall be "the board of supervisors of the county of \_\_\_\_\_" (the name of the county;) but this provision shall not prevent other county officers, when authorized by law, from suing in their name of office for the benefit of the county.

Name in which county shall sue and be sued.

SECTION 20. In all legal proceedings against the board of supervisors, the process shall be served on the clerk of the board; and whenever such action or proceeding shall be commenced, it shall be the duty of the clerk forthwith to notify the district attorney thereof, and to lay before the board of supervisors, at their next annual meeting, all the information he may have in regard to such action or proceeding.

On whom process against supervisors to be served, and duty of clerk of board.

SECTION 21. On the trial of every action in which a county may be interested, the inhabitants of such county shall be competent witnesses and jurors, if otherwise competent or qualified according to law.

Inhabitants of county to be competent witnesses and jurors.

SECTION 22. Any action in favor of or against a county which if prosecuted by or against an individual, could be prosecuted before a justice of the peace, may be prosecuted by or against such county in like manner before such justice.

Actions for or against counties may be prosecuted before justices.

SECTION 23. In all actions or proceedings prosecuted by or against counties, or by or against county officers in their name of office, costs shall be recoverable as in actions between individuals.

Costs recoverable in all cases.

SECTION 24. When a judgment shall be recovered against the board of supervisors of any county, or against any county officer, in an action prosecuted by or against him in his name of office, where the same should be paid by the county, no execution shall be awarded or issue upon such judgment, except as herein provided, but the same, unless reversed, shall be levied and collected as other county charges, and when so collected shall be paid by the county treasurer to the person to whom the same shall be adjudged, upon the delivery of a proper voucher therefor; but if payment thereof be not made within sixty days after the town treasurers are required to make their returns of county taxes next after the rendition of such judgment, execution may be issued

Execution against supervisors or county officers, not to issue, except on order of court.

thereon, upon the order of the court authorized to issue such execution, on special application therefor.

#### OF THE BOARD OF SUPERVISORS.

Of whom county board of supervisors to consist.

#### Quorum.

Where but one town in county, town supervisors to be county supervisors.

Annual meeting of board; when and where to be held.

Special meetings and adjournment.

General powers of county board of supervisors.

5 Wis., 184.

SECTION 25. The county board of supervisors shall consist of the chairmen of the boards of supervisors of the several towns, and the supervisors in any city in the county, authorized to sit in the county board; and a majority of the supervisors entitled to a seat in the county board, shall constitute a quorum for the transaction of business; but whenever a county shall consist of only one town, the supervisors of such town shall constitute the board of supervisors for such county, and they shall exercise and perform all the powers and duties of a board of county supervisors.<sup>1</sup>

SECTION 26. The county board of supervisors shall meet annually on the Tuesday next succeeding the general election in each year at the county seat, if there be one, in their respective counties, for the transaction of business as a board of supervisors. They may also hold special meetings when necessary, at such times and places as they may find convenient, and shall have power to adjourn from time to time, as they may deem necessary.

SECTION 27. The board of supervisors of each county in this state shall have power at any legal meeting:—

1. To make such orders concerning the corporate property of the county as they may deem expedient.

2. To examine and settle all accounts of the receipts and expenses of the county; and to examine, settle, and allow all accounts chargeable against such county, and when so settled they may issue county orders therefor, as provided by law. But the board of supervisors of any county shall not issue in any one year a greater amount of county orders than the amount of the county tax levied in such county for such year; and no interest shall ever be paid by any county on any county order.<sup>2</sup>

<sup>1</sup> Where the supervisors of a county have neglected to perform any duty required of them, at their annual meeting, they may be compelled by mandamus to meet again and perform it. They cannot by their neglect nullify a statute imposing duties upon them.

This was a case where the board of supervisors of Chenango county in the state of New York, at their annual meeting in 1851, neglected to issue warrants for the military commutation, which it was their duty to do by law at that meeting. The supreme court issued a mandamus requiring them to meet and issue the warrants. *Held*, that the mandamus was properly issued.—[*People v. Supervisors of Chenango*, 4 *Seld.*, 317.]

<sup>2</sup> The power granted to supervisors of a county to examine, settle, and allow all accounts chargeable against a county involves the right to reject, if sufficient reason in the opinion of the supervisors is not presented for the allowance.—[*People v. Supervisors, Dutchess Co.*, 9 *Wend.*, 508.]

A board of supervisors, by auditing and paying part of a claim presented, is not thereby precluded from contesting the residue, even upon a principle which would show the former allowance to have been improper.

A mandamus will not lie to a board of supervisors to control them in the exercise of their discretion as to the amount at which an account presented shall be audited.—[*People v. Supervisors*, 1 *Hill*, 362.]

Where a clear legal duty rests upon the board of supervisors, being a matter in which they have no discretion, mandamus will lie and is the proper remedy to compel them to perform that duty.—[*Boycie v. Supervisors of Cayuga*, 20 *Barb.*, 294.]

Boards of supervisors cannot bind their counties by an act not within the limits of the express powers conferred upon them by statute. They cannot allow a claim on any notions of their own as to its equity.—[*Chemung Canal Bank v. Supervisors of Chemung*, 5 *Denio*, 517.]

The necessary lights and fuel for the keeping of the several county offices in a suitable condition for the transaction of business, are a proper county charge.—[*Jefferson Co. v. Boley*, 5 *Wis.*, R.]

3. To build and keep in repair county buildings.

4. To cause the county buildings to be insured in the name of the treasurer of the county, and his successors in office, or otherwise, for the benefit of the county, as they shall deem expedient, and in case there are no public buildings, to provide suitable rooms for county purposes.

5. To apportion and order the levying of taxes, as provided by law, and direct the raising of such sums of money as may be necessary to defray the county charges and expenses, and all necessary charges incident to or arising from the execution of their lawful authority.

6. To represent the county, and to have the care of the county property, and the management of the business and concerns of the county, in all cases where no other provision shall be made.

7. To perform all other acts and duties which may be authorized and required by law.

SECTION 28. In addition to the ordinary powers and duties of <sup>Special powers.</sup> the several county boards of supervisors enumerated in the preceding section, the following special powers are conferred upon them, subject to such modifications and restrictions as the legislature shall from time to time prescribe, to wit:—

1. To set off, organize, vacate, and change the boundaries of <sup>s. L. 1861, ch. 257.</sup> towns in their respective counties, designate and give names thereto, the time and place of holding the first elections therein, and make all necessary orders for the disposition and preservation of the records and papers of any town which may be vacated by such board; *provided*, that no town shall be vacated unless a majority of the votes of all the members of the board shall so decide; *and provided further*, that no town in any county of this state with an area of thirty-six sections or less, according to the <sup>s. L. 1867, ch. 92.</sup> United States survey, shall be divided or have any part stricken therefrom, without first submitting the question to a vote of the legal voters of the town; nor unless a majority of all the legal voters residing in such town shall vote for the same.

2. To appoint commissioners to act with similar commissioners duly appointed in any other county, or counties, and authorize them to lay out, alter, or discontinue any road extending through their own, and one or more other counties, subject to the ratification of the board.

3. To alter, vacate, or discontinue territorial or state roads, within their respective counties.

4. To authorize the levying and collecting of taxes for specific purposes, in any town or school district, not exceeding one thousand dollars, when such town or school district is not authorized by law to levy and collect the same, or so large an amount; and to authorize the issuing and renewal of any warrant for the collection of town, school, or road district taxes, as they shall deem just and expedient, when the same is not otherwise authorized by law: *provided*, a majority of the electors of such town or school district shall at some duly organized meeting vote that such a tax be raised.

5. To grant licenses for keeping ferries in their respective counties, and such other licenses as shall be prescribed by law.

6. To allow such bounties for the destruction of wolves in their respective counties [*as they may deem proper.*]

S. L. 1852, ch.  
429.

7. To alter or change the name of any person, town, or village in their respective counties.

8. To alter or vacate any town or village, or any part thereof, surveyed, plotted, and recorded in any such county, upon petition, and upon such notice as is required in vacating towns by the circuit court.

9. To grant charters to any persons to build and maintain toll and free bridges in their respective counties, and to regulate the tolls thereof.

10. To incorporate literary, benevolent, charitable, and scientific institutions.

11. To grant charters and confer corporate powers upon such persons or companies as they may deem expedient, to build and maintain plank or turnpike roads in their respective counties, not inconsistent with the laws of this state, and to regulate the tolls thereof.

12. To grant charters for ferries to such persons, and for such period of time, as they may think right, not exceeding ten years, and to prescribe the rate of ferriage.

Orders, &c.,  
shall be in the  
form of laws.

S. L. 1852, ch.  
429.

SECTION 29. All orders and determinations by which the provisions of the next preceding section shall be carried into effect, shall be in the ordinary form of laws passed by the legislature of this state, and shall commence as follows:—

The board of supervisors of the county of ——— do order and determine as follows.

Duty of the clerk  
to publish orders  
&c., made under  
the provisions of  
this chapter.

Id.

SECTION 30. It shall be the duty of the clerk of the board of supervisors of the respective counties of this state, whenever any order or determination is made under the provisions of this chapter, to cause the same to be published in some newspaper published in such county, and if there shall be no newspaper published in such county, then in such paper as shall have the most general circulation in such county.

Papers contain-  
ing such orders  
to be distributed  
to town clerks.

Id.

SECTION 31. Such clerk shall order a number of the papers containing any such orders or determinations, sufficient to distribute one to each of the town clerks of his county, and so distribute them; and such town clerks shall, on receipt thereof, file the same in their respective offices.

When name of  
town is changed,  
it must be pub-  
lished, and secre-  
tary of state no-  
tified.

SECTION 32. In case the name of any town shall be changed by any board of supervisors, it shall be the duty of the clerk of said board immediately to transmit a copy of the record of the change of name to the secretary of state; also, to publish the same in some newspaper printed in such county, if one be published therein, if not, then in some newspaper published in an adjoining county, for four weeks.

Proceedings of  
the board in the  
division of  
towns, &c.

SECTION 33. When thirty or more freeholders, residents of any town, shall apply to the county board of supervisors for a division of such town, the supervisors, at the next annual town

meeting held for the election of town officers, shall submit the question to a vote of the legal voters of such town; the ballots shall contain the words (written or printed, or partly written or partly printed) "for division," or the words "against division;" and if the majority of votes cast on the subject be for division, the supervisors are hereby authorized to divide such town; but if a majority of votes cast on that subject be against division, the town shall not be divided: *provided*, that no application shall be acted upon by any board of supervisors as herein before provided, unless it contains the names of at least one-third of the voters of the town proposed to be divided, to be determined by the vote at the last general election in said town.

SECTION 34. Every county board of supervisors shall have a seal, and may alter the same at pleasure; they shall sit with open doors, and all persons conducting in an orderly manner may attend their meetings; and all questions before them, unless otherwise provided, shall be determined by the votes of the majority of the supervisors present.

SECTION 35. They shall, at their first meeting after their election, choose one of their number as chairman, who shall preside at such meeting, and at all other meetings during the year, if present; but in case of his absence from any meeting, the members present shall choose one of their number as temporary chairman.

SECTION 36. Every chairman shall have power to administer an oath to any person, concerning any matter submitted to the board, or connected with their powers or duties; and he shall countersign all county orders.

SECTION 37. No account shall be allowed by the county board of supervisors, unless the same shall be made out in separate items, and the nature of each item specifically stated; and where no specific fees are allowed by law, the time actually and necessarily devoted to the performance of any service charged in such account, shall be specified; which account so made out shall be verified by affidavit, to be filed therewith.<sup>1</sup>

SECTION 38. Nothing in the preceding section shall be construed to prevent any such board from disallowing any account, in whole or in part, when so rendered and verified, nor from requiring any other or further evidence of the truth and propriety thereof, as they may think proper.

<sup>1</sup> The clause of this section requiring accounts to be verified by affidavit to be filed therewith, is directory to the board of supervisors.

A compliance with that provision is not necessary to give the board jurisdiction of the claim, nor does a failure to comply with it oust the board of jurisdiction.

The board may reject an account for such defect, but if they waive it, and pass upon the account, and an appeal is taken from their decision, the appeal cannot be dismissed in the circuit court for want of jurisdiction.

If the board intend to require a compliance with the statute, they should do so in the first instance, that the defect may be corrected; and it is too late to take such objection after an appeal is taken from their decision.—[*Parker v. Supervisors of Grant Co.*, 1 Wis. R., 414.

Where an account against the county, consisting of a single item of \$200, was presented to the board of supervisors, who allowed thereon \$100, from which order of allowance the plaintiff or claimant appealed to the circuit court, and afterward and before the appeal was determined, he obtained a county order for the \$100, so allowed, and gave a receipt therefor,—*held*, that this was a waiver of the appeal, and amounted to a satisfaction of the claim.—*Smith, J., dissenting.*—[*Pulling v. Supervisors of Columbia Co.*, 3 Wis. R., 837.

S. L. 1853, ch. 94.

To have a seal, sit with open doors, and meetings to be public.

To elect a chairman.

Chairman to administer oaths and countersign orders.

Accounts presented to be specific, and verified by affidavit.

1 Wis., 414.  
3 id., 837.

Board may disallow account verified, or require further proof.



When new town organized, plot and record thereof to be made, &c.

SECTION 39. Whenever any board of supervisors shall organize a new town, or alter the boundaries of any town in their county, they shall cause a plot and record to be made thereof, by their clerk, specifying the name and boundaries of such town, which plot and record shall be kept in the office of such clerk; and said board shall designate some place in the town so organized by them, where the first town meeting shall be held.

When claim disallowed by board, appeal allowed to circuit court.

5 Wis., 438.

SECTION 40. When any claim of any person against a county shall be disallowed, in whole or in part, by the board of supervisors, such person may appeal from the decision of such board to the circuit court for the same county, by causing a written notice of such appeal to be served on the clerk of such board, within thirty days after the making of such decision, and executing a bond to such county, with sufficient surety, to be approved by the clerk of said board, conditioned for the faithful prosecution of such appeal, and the payment of all costs that shall be adjudged against the appellant by the court.<sup>1</sup>

<sup>1</sup> Form of notice to clerk of board of supervisors in case of appeal.

To O. Gibbs, jr., esq., clerk of the board of supervisors, of the county of Pierce, state of Wisconsin.

You will take notice, that I have appealed to the circuit court, from the decision of the board of supervisors of said county, made at their late annual meeting, commencing on the — day of —, 18—, in disallowing a certain claim in my favor for twenty-five dollars, presented by me for [state for what.]

Dated this — day of —, 18—.

A. H. YOUNG.

*Form of bond to county, in case of appeal from board of supervisors.*

Know all men by these presents, that we, A. H. Young, and Geo. T. Gibbs, and Hilton Doe, of the county of Pierce, and state of Wisconsin, are held and firmly bound unto said county of Pierce, in the penal sum of — dollars, for which sum well and truly to be paid, we bind ourselves, our heirs, executors, and administrators, and each of them, firmly by these presents, sealed with our seals and dated this — day of —, 18—.

The condition of the above obligation is such, that, whereas the above bounden A. H. Young has appealed to the circuit court from the decision of the supervisors of said county of Pierce, made at their late annual meeting, commencing on the — day of —, 18—, in disallowing a certain claim in favor of said A. H. Young, for twenty-five dollars, for [state the nature of the claim.] Now if the said A. H. Young shall faithfully prosecute his said appeal and pay all costs that shall be adjudged against him by said circuit court, then this obligation to be void; otherwise to remain in full force and effect.

A. H. YOUNG.	[L. S.]
GEO. T. GIBBS.	[L. S.]
HILTON DOE.	[L. S.]

An appeal, lies from the decision of the county board of supervisors, disallowing an account in whole or in part, to the circuit court of the proper county.

To take an appeal from the decision of the board of supervisors, disallowing an account, it is necessary, among other things, for the appellant to execute a bond to the county, to be approved by the clerk of said board, conditioned for the faithful prosecution of the appeal, and the payment of all costs that shall be adjudged against him by the circuit court.

The statute does not prescribe any particular form of expression for the bond, but if it substantially conforms to the statute it is sufficient.—[Conover v. Supervisors Washington Co., 5 Wis. R., 438.]

The case above cited was where a claim had been disallowed by the board of supervisors, and an appeal taken to the circuit court. The appeal was dismissed by the circuit court on the ground of insufficiency of the bond. The cause was taken to the supreme court, where the bond was held to be sufficient. The following is a copy of the bond, and having been held sufficient by the supreme court, may be adopted as a proper form, although not in the usual form of such instrument.

SECTION 41. The clerk of the board, upon such appeal being taken, shall immediately give notice thereof to the district attorney, and shall make out a brief return of the proceedings in the case before the board, with their decision thereon, and shall file the same, together with the bond and all the papers in the case in his possession, with the clerk of such circuit court; and such appeal shall be entered, tried, and determined, the same as appeals from justices' courts, and costs shall be awarded thereupon in like manner.

Clerk of board to give notice of same, and make return, and how appeal tried.

SECTION 42. No action shall hereafter be maintained by any person against a county, upon any claim or demand other than a county order, until such person shall first have presented his claim to the board of supervisors of such county, for allowance.

Action against county, claim first submitted to board, &c.

S. L. 1853, ch. 12.

SECTION 43. The determination of the board of supervisors of any county, disallowing, in whole or in part, any claim of any person, shall be final and conclusive, and a perpetual bar to any action in any court founded on such claim, unless an appeal shall be taken from the decision and determination of such board of supervisors, or unless such board of supervisors shall consent and agree to the institution and maintenance of an action by such claimants against such county: *provided, however*, that when the board of supervisors shall refuse or neglect to act upon any claim duly presented to them, this chapter shall not be so construed as to prevent the institution and maintenance of action by such claimant.

The determination of board to be final, unless appeal is taken.

Proviso, when board refuses to act.

SECTION 44. The books, records, and accounts of the boards of supervisors, shall be deposited with their clerk, and shall be open, without any charge, to the examination of all persons.

Books, &c., of board, to be deposited with their clerk, and open to inspection without charge.

SECTION 45. The board of supervisors in every county shall, at the expense of the county, furnish annually, and in due season, the assessor in each town in their county with a suitable blank assessment roll for his town, prepared according to the provisions of law; and shall also provide suitable books and stationery for the use of the clerk of their board, the register of deeds, the judge of probate, county treasurer, and the clerk of the circuit court, together with appropriate cases and other furniture, for the safe and

Board to furnish blank assessment rolls, and books, &c., to county officers.

*Another form of bond in case of appeal.*

We, Samuel S. Conover and Robert Wasson, jr., of the city and county of Milwaukee, and state of Wisconsin, acknowledge ourselves to owe and be indebted to the county of Washington in said state, in the sum of one hundred dollars, to be levied of our several goods and chattels, lands and tenements, to the use of said county of Washington, if default be made in the condition following, to wit:—

Whereas, the said Samuel S. Conover has appealed from the decision of the board of supervisors of the county of Washington to the circuit court of said county, upon a bill or claim presented by him to said board, marked "No. 142," which claim was disallowed by said board on the 29th day of November, 1855, during its annual session held in November, 1855; now the condition of this obligation is such, that if the said Samuel S. Conover shall faithfully prosecute his said appeal, and pay all costs that shall be adjudged against him, the said appellant, then this obligation to be void; otherwise of force.

SAMUEL S. CONOVER, [L. S.]  
ROBERT WASSON, JR., [L. S.]

convenient keeping of all the books, documents, and papers belonging to each of said offices; and also official seals for each of said officers, where the same are required by law.

To examine annually the county orders, and to make list of and destroy same.

SECTION 46. The board of supervisors at their annual session in each year, or oftener if they deem it necessary, shall carefully examine the county orders returned by the county treasurer, by comparing each order with the record of orders in the clerk's office. They shall cause to be entered on the said record, opposite the entry of each order issued, the date when the same was canceled. They shall also make a complete list of the orders so canceled, specifying the number, date, amount, and the person to whom the same is made payable, which statement shall be entered at length on the journal of the board, and immediately after the above requirements are complied with, the orders so canceled shall be destroyed in the presence of the board.

To publish annually a report of receipts and expenditures.

SECTION 47. The several boards of supervisors shall cause to be made out and published yearly, immediately after their annual meeting, in at least one newspaper published in their county, if such there be, a report of the receipts and expenditures of the year next preceding, and the accounts allowed; and if no newspaper be published in the county, then a copy of such report shall be posted on the court-house door, and at two other public places in the county.

How special meeting called.

SECTION 48. A special meeting of the county board of supervisors of any county shall be holden only when requested by a majority of the members thereof; which request shall be in writing, addressed to the clerk of the board, and specifying the time and place of such meeting; and upon the reception of such request, the clerk shall immediately transmit notice in writing of such meeting to each of the members of the board.<sup>1</sup>

Compensation

SECTION 49. Each member of the board of supervisors shall

<sup>1</sup> *Form of request for special meeting of county board of supervisors.*

To \_\_\_\_\_ esq., clerk of the board of supervisors of the county of *Manitowoc*, state of Wisconsin.

The undersigned, a majority of the members of said board of supervisors, do request that a special meeting of said board be held, to convene on the \_\_\_\_\_ day of \_\_\_\_\_, 18—, at [state the place.]

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 18—.

OLE OLESON.  
JOHN R. WEBBER.  
WM. PLAYFAIR.  
A. W. PRESTON.  
J. D. MARKHAM.

ALANSON HICKOCK.  
F. M. BOUCHER.  
JOHN ROBINSON.  
JOHN F. GULES.  
RICHARD DONOVAN.

*Form of notice to each supervisor, of special meeting of board.*

To *H. C. Hamilton*, esq., a member of the county board of supervisors of *Manitowoc* county:—

You are hereby notified, that in accordance with a request in writing addressed to the undersigned clerk of said board of supervisors, by a majority of the members of said board, a special meeting of said board of supervisors will be held, to convene on the \_\_\_\_\_ day of \_\_\_\_\_, 18—, at [state the place.]

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 18—.

A. B., clerk of the board of supervisors.

be allowed and paid by the county, a compensation for his services and expenses in attending the meetings of the board, at the rate of two dollars per day for the time he shall actually attend, and six cents for each mile traveled in going to or returning from the place of meeting, for any distance traveled beyond six miles from such place; but no *per diem* allowance shall be made for any time occupied in traveling, where mileage is allowed therefor, and no supervisor shall be allowed to draw pay for more than fifteen days' attendance on the county board, in any one year.

SECTION 50. If any supervisor shall refuse or neglect to perform any of the duties which are or shall be required of him by law as a member of the county board of supervisors, without just cause therefor, he shall for each offense forfeit a sum of not less than fifty nor more than two hundred dollars.

SECTION 51. In all cases when the board of supervisors of any county in this state shall deem it necessary for the better information of the inhabitants thereof, they may order public notices relating to tax sales or other affairs of said county, to be published in one newspaper published in any other than the English language: *provided*, that all such notices shall be published in a newspaper published [*printed*] in the English language, as heretofore required by law.

SECTION 52. The rates for such publication shall be the same as those prescribed by law for the publication in the English language, and no extra charge shall be allowed for the translation of the same.

SECTION 53. All such publications shall be paid by the county ordering the same; and the county board of supervisors shall audit all such accounts and draw orders on the county treasurer in payment therefor.

#### OF THE CLERK OF THE BOARD OF SUPERVISORS.

SECTION 54. A clerk of the board of supervisors shall be elected in each county in this state for the term of two years, and he shall, before he enters upon the duties of his office, execute to and file with the treasurer of the county, a bond with two or more sureties in the penal sum of not less than two thousand dollars, to be fixed by the board of supervisors, to be approved by such treasurer, with a condition in substance as follows, to wit:—

"Whereas the above bounden \_\_\_\_\_ was elected to the office of the clerk of board of supervisors of the county of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_; now, therefore, the condition of the above obligation is such that if the said \_\_\_\_\_ shall faithfully perform all the duties of his said office, and shall pay over all moneys that may come into his hands as such clerk, as required by law, and shall deliver to his successor in office all the books, records, papers, and other things belonging to his said office, then the above obligation shall be void; otherwise to be and remain in full force."

SECTION 55. Every such clerk shall appoint a deputy, in writing under his hand, and shall file such appointment in his office; and such deputy, in case of the absence or disability of such clerk, or in case of a vacancy in his office, shall perform all

the duties of such clerk during such absence, or until such vacancy shall be filled; and every such clerk and his sureties shall be responsible, under his official bond, for the acts of his deputy.

If vacancy, board may appoint a clerk.

SECTION 56. In case of vacancy in the office of such clerk, or in case he shall be incapable of discharging the duties of his office, the county board of supervisors may, if they see fit, appoint a person clerk of their board; and the person so appointed, upon giving a bond with like sureties, penalty, and condition as that above required of such clerk, shall perform all the duties of such clerk until such vacancy be filled, or such disability be removed; and thereupon the powers and duties of the deputy of the last clerk shall cease.

General duties of clerk of board.

SECTION 57. It shall be the general duty of such clerk:—

1. To record in a book to be provided for that purpose, all the proceedings of the board.

2. To make regular entries of all their resolutions and decisions on all questions concerning the raising of moneys.

3. To record the vote of each supervisor on any question submitted to the board, if required by any member present.

4. To sign all orders issued by the board for the payment of money, and to record in a book provided for that purpose the reports of the county treasurer of the receipts and disbursements of the county.

5. To preserve and file all accounts acted upon by the board, with their action thereon; and he shall perform such special duties as are required of him by any law.

Duty as to accounts and records.

SECTION 58. It shall be the duty of such clerk to designate upon every account on which any sum shall be audited and allowed by the board, the amount so audited and allowed, and the charges for which the same was allowed; and he shall also deliver to any person who may demand it, a certified copy of any record in his office, or of any account therein, on receiving from such person six cents for every folio contained in such copy.

How county orders issued and entered.

SECTION 59. Such clerk shall not sign or issue any county order except upon a recorded vote or resolution of the board of supervisors authorizing the same, and the name of the person to whom it is issued shall be entered in a book to be kept by him in his office for that purpose.

To file notice of apportionment of school moneys, and transmit copy to county treasurer, &c.

SECTION 60. Whenever the clerk of the board of supervisors of any county shall receive from the state superintendent notice of the apportionment of school moneys to be distributed in the county, he shall file the same in his office and transmit a certified copy thereof to the county treasurer, and such clerk shall also lay a certified copy thereof before the board of county supervisors at their next annual meeting.

To transmit to state superintendent resolutions of board relative to raising school moneys.

SECTION 61. It shall be the duty of the clerk of the board of supervisors in each county, on the last Monday in December in each year, to transmit to the state superintendent certified copies of all resolutions and proceedings of the board of supervisors of which he is clerk, passed or had during the preceding year, relating to the raising of any money for school purposes, and to report the amount to be raised in each town in such county.

SECTION 62. The clerk of the board of supervisors of each county in this state shall, as often as a new town shall be organized in his county, or the boundaries of any town therein shall be altered, and immediately thereafter, make out and transmit to the secretary of state a certified statement of the names and boundaries of the towns so organized, and of the boundaries of any town the boundaries of which have been so altered.

SECTION 63. Such clerk shall receive a reasonable compensation for such services as he may perform as clerk of the board, where no specific fees are allowed therefor, to be fixed by the board and paid by the county.

\* \* \* \* \*

#### MISCELLANEOUS PROVISIONS CONCERNING COUNTY OFFICERS.

SECTION 156. Every sheriff, clerk of the circuit court, register of deeds, county treasurer, and clerk of the board of supervisors, shall keep his office at the seat of justice of his county, and in the office provided by the county, if any such has been provided, and if there be none established, then at such place as shall be fixed by special provision of law, or if there be no such provision, then at such place as the county board of supervisors shall direct, and shall keep the same open during the usual business hours each day, Sundays excepted; and all books and papers required to be kept in their office, shall be open for the examination of any person, and any person when so examining the same may take notes from such books, records, or papers, or take minutes therefrom; and if any of said officers shall neglect or refuse to comply with the provisions of this section, he shall forfeit for each day he shall so refuse to comply with the same, the sum of five dollars.

SECTION 157. Every county officer named in this chapter shall, before entering upon the duties of his office, and within twenty days after receiving official notice of his election or appointment, or within twenty days after the commencement of the term for which he was elected or appointed, execute and deposite his official bond as prescribed by law; and every such officer shall also within the same time take and subscribe the oath of office prescribed by the constitution of this state, before some officer authorized to administer oaths, and deposite the same with his official bond, to be filed and preserved therewith.<sup>1</sup>

SECTION 158. Every deputy appointed by any of said officers shall, before entering upon his duties under such appointment, take and subscribe the like oath of office as that above required of the officer appointing him, and shall deposite the same in the office where the bond of such officer is deposited; and in case he shall neglect to take and deposite such oath as aforesaid, he shall forfeit and pay one hundred dollars.

<sup>1</sup> A person elected to a county office who receives no official notice of his election before the commencement of the term, may qualify at any time within twenty days after such commencement of the term.

It is the duty of the clerk of the board of supervisors, immediately after the canvass of the votes given at an election for county officers, to make a certificate of election for each person elected to any such office, upon his application therefor.

If no notice be given to a person elected to a county office, and no certificate of election given or applied for before the commencement of the term of office, the election is not impaired, but he may qualify within twenty days after the commencement of the term.—[Attorney General v. Elderkin, 5 Wis. R., 300.]

To transmit to secretary of state names and boundaries of new towns.

His compensation.

Certain county officers to hold their offices at the county seat, &c.  
S. L. 1853, ch. 97.

Offices to be kept open during business hours, &c.

When all county officers shall execute bond, and take oath of office.  
5 Wis., 300.

Deputies to take and file oath of office.

Copies of papers,  
&c., deposited  
with certain  
county officers to  
be evidence.

**SECTION 159.** Copies of all documents, writs, proceedings, instruments, papers, and writings, duly filed or deposited in the office of any judge of probate, register of deeds, clerk of the circuit court, county treasurer, or clerk of the board of supervisors, and transcripts from the books of record or proceeding kept by any of said officers, with the seal of his office affixed, shall be evidence in all cases equally and in like manner as the originals.

County officers  
subject to remo-  
val.

**SECTION 160.** Every county officer named in this chapter shall hold his office subject to removal, as provided by the constitution and laws of this state, until his successor is elected or appointed and qualified.

## CHAPTER XIV.

R. S. 1868.  
CHAP. 14.  
p. 172.

### OF RESIGNATIONS, VACANCIES, AND REMOVALS, AND OF SUPPLYING VACANCIES.

\* \* \* \* \*

#### VACANCIES.

What events to  
create vacancy.

**SECTION 2.** Every office shall become vacant on the happening of either of the following events, before the expiration of the term of such office:—

1. The death of the incumbent.
2. His resignation.
3. His removal.
4. His ceasing to be an inhabitant of this state, or, if the office be local, his ceasing to be an inhabitant of the district, county, town, city, or village for which he shall have been elected or appointed, or within which the duties of his office are required to be discharged.
5. His conviction of any infamous crime, or of any offense involving a violation of his official oath.
6. His refusal or neglect to take his oath of office, or to give or renew his official bond, or to deposit such oath or bond within the time prescribed by law.
7. The decision of a competent tribunal declaring void his election or appointment.
8. The death of the person elected or appointed to fill a vacancy, or for a full term, before he qualifies, or his death before the time when by law he should enter upon the duties of the office to which he was elected or appointed.

When governor  
to declare office  
vacant.

**SECTION 3.** The governor shall also declare vacant the office of every officer required by law to execute an official bond, whenever a judgment shall be obtained against such officer, for a breach of the condition of such bond.

## REMOVALS FROM OFFICE.

SECTION 6. The board of supervisors of any county may remove the clerk of their board, when, in their opinion, he is incompetent to execute properly the duties of his office, or when, on charges and evidence, it shall appear to said board that he has been guilty of official misconduct, or habitual or willful neglect of duty, if, in the opinion of said board, such misconduct or neglect shall be a sufficient cause for removal; but no such clerk shall be removed for such misconduct or neglect, unless charges thereof shall have been preferred to said board, and notice of the hearing, with a copy of the charges, delivered to such clerk, and an opportunity given him to be heard in his defense; and in no case shall such removal be made, unless two-thirds of all the supervisors entitled to a seat in such board shall vote therefor.

Board of supervisors may remove their clerk.

## CHAPTER XV.

## OF TOWNS AND TOWN OFFICERS; POWERS AND DUTIES OF TOWNS.

R. S. 1858.  
CHAP. 15.  
p. 175.

SECTION 1. Each organized town shall be a body corporate, and as such may sue and be sued; and may appoint all necessary agents and attorneys in that behalf; and shall have power to purchase and hold real and personal estate for the public use of the inhabitants thereof, and to convey and dispose of the same; and to make all contracts that may be necessary and convenient for the exercise of its corporate powers, and any orders for the sale or disposal of its corporate property, which the inhabitants thereof may deem expedient.<sup>1</sup>

Organized towns to be bodies corporate.  
Their powers.  
8 Wis., 714.

SECTION 2. The qualified electors of each town shall have power, at any legal meeting thereof, to vote to raise such sum of money for the support of common schools, in addition to the amount

Powers of electors at town meetings.

<sup>1</sup> Towns may be considered as quasi corporations, with limited powers co-extensive with the duties imposed on them by statute or usage, but restricted from a general use of the authority which belongs to corporations by common law.—[*Rumford v. Wood*, 18 Mass., 198.

The several organized towns in this state are not municipal corporations in the sense in which the term is used in sec. 2 of art. 11 of the constitution: they are regarded as quasi corporations.—[*Norton v. Peck*, 3 Wis. R., 714.

The whole power and capacity of towns as corporations is derived from and conferred by statute, and is specified and confined to certain functions only. Their authority to contract or assume liabilities is restricted to cases where such action is necessary for the exercise of their appropriate functions as corporations, and their power to sue and be sued must be limited to cases where the assertion of their corporate rights, or the enforcement of their corporate liabilities, requires such proceeding.—[22 Barb., 684.

When a contract is made in pursuance of a vote of a town, but before the contract is performed the vote is rescinded, it seems that the person with whom the contract is made is not affected by the rescission unless he had notice thereof; in which case it would be otherwise.—[*Allen v. Taunton*, 19 Pick., 485.

A town, as such, has no authority to contract with a plank road company or corporation, granting them the use of a highway in the town. As a corporation a town has nothing to do with, and no interest in, the highways within its limits; the title to the soil is in individuals; the right to their use belongs to the inhabitants of the town, not exclusively, but in common with the whole public. The care and superintendence of highways has been committed to certain officers of the town, chosen for that purpose, and whose duties are prescribed by law.—[*See 22 Barb.*, 684.



required by law to be raised, as they may deem necessary; to vote to raise money for the repair and building of roads and bridges, for the support of the poor, and for defraying all proper charges and expenses arising in the town; and they may direct the institution and defense of actions in all controversies between such town and corporations, individuals, or other towns, and direct such sum of money to be raised for prosecuting and defending such actions, as they may deem proper.<sup>1</sup>

May make orders, and by-laws; may annex penalties, and may restrain cattle, &c., from going at large.

5 Wis., 27.

SECTION 3. The qualified electors of each town may, at any legal meeting thereof, make such orders for the management of all prudential affairs of the town as they may judge most conducive to the peace, welfare, and good order thereof; and all such orders and by-laws for determining the time and manner in which cattle, horses, sheep, swine, or other animals shall be restrained from going at large on highways, as they may deem proper; and they may annex to such orders and by-laws suitable penalties, not exceeding ten dollars for any one breach thereof, to be recovered before any justice of the peace of the town or county where the offense shall have been committed.<sup>2</sup>

By-laws to be published and to be binding.

SECTION 4. No by-law made by any town shall take effect before the same shall be published by posting up copies thereof in three of the most public places in the town; and such by-laws, duly made, and so published, shall be binding upon all persons coming within the limits of the town, as well as upon the inhabitants thereof; and the same shall remain in force until altered or repealed at some subsequent town meeting.

Actions by or against towns.

SECTION 5. All actions, acts, or proceedings by or against a town in its corporate capacity, shall be in the name of such town; but every conveyance of land within the limits of such town, made in any manner for the use or benefit of its inhabitants, shall have the same effect as if made to the town by name; any civil action

<sup>1</sup> It is held in New Hampshire, that towns have a qualified interest in the roadways and bridges they have erected, and may maintain an action on the case for the destruction or obstruction of the road, or the conversion of the materials.—[*Town of Troy v. Cheshire R. R. Co.*, 3 *Porter*, 83.]

<sup>2</sup> It is competent for the inhabitants of a town to take upon themselves the expense of a suit against their agent or servant, in which the interests of the town are directly involved. Where the servants of the town have made mistakes, which have rendered them liable at law, it has been held legal and proper for the town to meet the expense.—[*Babbitt et al. v. Savoy*, 3 *Cush.*, 530.]

The electors at town meeting cannot direct an officer of the town to perform any act which by law he has not authority to perform, nor to act in any other manner in the performance of his duty, than that which is pointed out by law.—[*Keen v. Stetson*, 5 *Pick.*, 492.]

The powers of the electors to bind the town are conferred by statute, and are limited to such acts as are prescribed by law.—[*Cornell v. Guilford*, 1 *Denio*, 510.]

A town is authorized to indemnify its officers against a liability which they may incur in the *bona fide* discharge of their duties, although it turn out that they have exceeded their legal rights and authority.—[*Bancroft v. Lynfield*, 18 *Pick.*, 566.]

<sup>2</sup> Any by-law of a town declaring that all hogs or other animals should be kept shut up, only extends to prevent hogs from going at large on the highway; and it seems that a town has no power to prevent the inhabitants from allowing their hogs or other animals to go at large upon their own lands.—[*Shepley v. Hees*, 12 *Johns.*, 433.]

Every man is bound, upon peril of being accounted a trespasser, to keep such animals as are the subject of absolute property, upon his own soil.

If swine, or other animals, depasturing in the highway, break into an adjoining close, though the fence be defective, the owner of such animals will be liable; and it matters not whether there is or is not a town regulation restraining such animals from running at large: they will not in the absence of such regulation be considered free commoners.

The public have the full right of passing along and over the highways, but have not the right of pasturage therein.—[*Hanison v. Brown*, 5 *Wis. R.*, 27.]

which could be prosecuted by or against an individual, before a justice of the peace, may be prosecuted by or against a town before such justice.<sup>1</sup>

#### OF TOWN MEETINGS.

SECTION 6. The annual town meeting of the several towns in this state shall be held on the first Tuesday in March in each year; and at such meeting there shall be an election of the following officers: three supervisors, one of whom shall be designated on the ballots as chairman; one town clerk; one treasurer; one superintendent of schools; so many justices of the peace as there are provided by law to be elected in each town; so many constables as shall be ordered by the meeting, not exceeding three in number; from one to three assessors, as may be ordered by the meeting; one sealer of weights and measures; and one overseer of highways for each road district in said town.<sup>2</sup>

Annual town meeting, and what officers to be elected thereat.

4 Wis., 420.

SECTION 7. Every person who shall have resided in the state one year immediately previous to any town meeting, and who shall be otherwise qualified to vote at a general election, may vote at such town meeting in the town where he resides.

Who entitled to vote.

SECTION 8. The annual town meetings in each town shall be held at the place where the last town meeting was held, or at such other place therein as shall have been ordered at a previous meeting, or, when there has been no such previous meeting, at such place as shall be directed in the act or proceedings by which the town was organized.

Where annual town meeting to be held.

SECTION 9. Whenever it shall become impossible or inconvenient to hold a town meeting at the place designated therefor, the board of inspectors, or a majority of them, after having assembled at, or as near as practicable to, such place and opened the meeting, and before receiving any votes, may adjourn such meeting to the nearest convenient place for holding the same, and at such adjourned place forthwith proceed with the meeting.

When place of meeting may be adjourned.

SECTION 10. Upon adjourning any town meeting as provided in the last section, the board of inspectors shall cause proclamation thereof to be made, and shall station a constable or some other

Proclamation to be made of adjournment, &c.

1 It is held in New York that where a cause of action exists in behalf of a town and no officer is by statute authorized to prosecute for such cause of action, it is proper for the electors, when convened at town meeting, to direct such action to be brought; for which purpose they may appoint an agent to institute and prosecute the same; but such suit must be brought in name of the town.—[*Cornell v. Guilford*, 1 Den., 510.]

2 The determination of the electors of a town as to the number of constables or assessors to be chosen, must be by a formal vote or resolution.

Where there is no limitation of the number by such formal resolution or order, and more than three persons are voted for, the three having the greatest number of votes are entitled to discharge the duties and receive the emoluments of the office.

Where, at town meeting, the electors limit the number of these officers to be chosen, and ballots are found to contain a greater number of names designated for the office, than the number to be elected, such ballots cannot be canvassed, but must be rejected.—[*See People v. Adams*, 9 Wen., 333.]

If a ballot contains the names of two persons for the same office, it is bad as to both, but it cannot be rejected as to candidates for other offices regularly named upon the same ballot.—[*Carpenter v. Ely* 4 Wis. R., 420.]

Notwithstanding the determination at town meeting, that the number of constables or assessors in the town shall be three, the election of only two in either case, will oust all those of the preceding year, although the number then chosen was three; neither of them can hold over on the pretense that no person is chosen in his place.—[*People v. Jones*, 17 Wen., 81.]

proper person at the place where such meeting was opened, to notify all electors arriving at such place that the meeting has been adjourned, and the place to which it has been adjourned.

Town meeting may be adjourned except for election of town officers.

SECTION 11. Any annual or special town meeting may be adjourned to any other day, and from time to time, for the purpose of transacting any proper business of the town, except for the election of town officers.

When first town meeting in new town to be held.

SECTION 12. The first town meeting after the organization of any town shall be held on the first Tuesday in March after its organization, and at such meeting there shall be an election for such officers as are by law to be elected at town meetings.

Proceedings at first town meeting in new towns.

SECTION 13. At the first town meeting in any town, the qualified electors present between the hours of nine and ten o'clock in the forenoon, shall choose one of their number as chairman, one of their number as clerk, and two others of their number as inspectors, who shall severally take and subscribe the oath required of inspectors and clerks of general elections, and shall conduct the proceedings of such meeting as other town meetings are required by law to be conducted.<sup>1</sup>

If new town fail to hold town meeting on the day specified, three voters may call meeting.

SECTION 14. If the inhabitants of any newly organized town shall fail to hold their first town meeting on the day specified by law, any three qualified voters of such town may call a meeting of the electors of such town, for such town election, at any time thereafter, by posting up notices thereof at not less than three public places in such town, at least ten days previous to the holding of such meeting.<sup>2</sup>

How oath administered to inspectors and clerk.

SECTION 15. At such first town meeting the chairman shall administer the oath of office to the other inspectors and to the clerk; and either of the other inspectors, after having been qualified, may administer the like oath to the chairman.<sup>3</sup>

Special town meetings may be held, and how called.

SECTION 16. Special town meetings may be held for the purpose of choosing town officers to fill any vacancies that may occur, also for the purpose of transacting any other lawful business, on a request being made to the clerk of the town, in writing, signed by twelve qualified voters in such town, specifying in such request the purposes for which such meeting is to be held.<sup>4</sup>

<sup>1</sup> See *ante*, p. 13, sec. 25.

<sup>2</sup> Form of notice by three voters, calling town meeting in newly organized town.

The inhabitants and electors of the town of *Hemlock*, in the county of *Wood*, having failed to hold their first town meeting on the day specified by law, are requested by the undersigned, three qualified voters of such town, to assemble and hold a town meeting on the — day of —, 18—, at the hour of — o'clock in the forenoon, at [state where] in said town.

Dated at *Hemlock*, this — day of —, 18—.

<sup>3</sup> Where, in pursuance of law, the oath of office is administered to an officer in open town meeting in presence of the town clerk, the clerk's record of the fact is competent evidence of the administration of the oath.—[*Briggs v. Murdock*, 13 *Pick.*, 305.]

<sup>4</sup> Form of request for special town meeting.

To *L. P. Powers, esq.*, clerk of the town of *Grand Rapids*, in the county of *Wood*.

The undersigned, twelve qualified voters of said town of *Grand Rapids*, do

SECTION 17. Every town clerk with whom any such request shall be left, as mentioned in the preceding section, shall record the same, and immediately cause notices to be posted up in three of the most public places in the town, giving not less than fifteen nor more than twenty days' notice of such meeting; and if there be a newspaper printed in such town, he shall cause a copy of said notice to be published therein, at least five days before the time appointed for such meeting.<sup>1</sup>

Town clerk to record request and give notice of special town meeting.

SECTION 18. Every notice given for a special town meeting shall specify the purpose for which it is to be held; and if vacancies in office are to be filled at such meeting, such notice shall specify in what offices vacancies exist, how they occurred, and who were the last incumbents; and if the vacancy be in the office of justice of the peace, such notice shall also state at what time the legal term of office will expire.

Notices for special town meeting, what to specify.

SECTION 19. The minutes of the proceedings of every town meeting shall be subscribed by the clerk, and filed in the office of such clerk, within five days after such meetings.<sup>2</sup>

Minutes of town meetings to be subscribed and filed.

SECTION 20. No notice of an annual town meeting shall be necessary.

Notice of annual town meeting not necessary.

#### OF THE MANNER OF CONDUCTING TOWN MEETINGS.

SECTION 21. The chairman of the supervisors in each town shall be the chairman of the town meetings; or, if he be absent, one of the other supervisors of the town shall serve as chairman; but if no one of the supervisors be present, then the qualified electors at such town meeting may choose a chairman.

Chairman of supervisors to be chairman of town meeting, if present.

SECTION 22. The supervisors of each town shall be the board of inspectors of the election at the town meetings thereof; and if there shall be any vacancy in said board of inspectors, the electors present shall choose *viva voce* from the qualified electors of the town, so many inspectors as there are vacancies in said board, and the persons so chosen shall be authorized to act as inspectors of such election.

Supervisors to be board of inspectors. Vacancies may be supplied by electors.

SECTION 23. The town clerk shall be the clerk of town meetings, and shall keep faithful minutes of the proceedings and a cor-

Town clerk to be clerk of town

request that a special town meeting be held in said town, for the purpose of [here set forth the purpose.]

Dated at *Grand Rapids*, this — day of —, 18—.

<sup>1</sup> Form of notice for special town meeting.

#### SPECIAL TOWN MEETING.

The inhabitants and electors of the town of *Grand Rapids*, in the county of *Wood*, are hereby notified that a special town meeting will be held in said town at [state where] on the — day of —, 18—, to convene between the hours of nine and ten o'clock in the forenoon, for the purpose of [set forth the purpose as contained in the request,] a request for such meeting having been duly made to the undersigned, by twelve qualified voters of such town, specifying therein the purposes above set forth, as the object of such meeting.

Dated at *Grand Rapids*, this — day of —, 18—.

L. P. POWERS, town clerk.

<sup>2</sup> One who was formerly a town clerk, but is no longer in the office, cannot amend a town record made by him when town clerk; but if he continue in office he may amend the record of a previous term; the intervening election is held to be substantially a continuance of the clerk in the same office.—[*Harinell v. Littleton*, 18 Pick., 229.]

meeting, and his duties as such.

Vacancy may be supplied.

Persons chosen to supply vacancies to be sworn.

Order of business to be stated at opening of town meeting, &c.

When motion to reconsider vote may be entertained.

Polls, when to be opened and closed, and proclamation to be made.

Town officers to be chosen by ballot except overseers.

Names to be on one ballot, and the offices specified, and no more

rect poll list, containing the names of all persons voting at such meetings; and he shall enter at length every order or direction, and all rules and regulations, made by the meeting; but if the town clerk be absent, then such person as shall be appointed by the board of inspectors for that purpose shall act as clerk of the meeting.<sup>1</sup>

SECTION 24. Every person chosen at any town meeting to supply any vacancy in the board of inspectors of the election, or appointed to fill a vacancy in the office of the clerk of such meeting, shall, before entering upon the duties of his office, take and subscribe the oath required of inspectors and clerks of general elections.

SECTION 25. At the opening of every town meeting, the chairman thereof shall state the business to be transacted and the order in which such business will be entertained, and no proposition to vote a tax, except for the support of common schools, the relief of the poor, and for defraying the necessary town charges, shall be acted upon out of the order of business as stated by the chairman; and no proposition to reconsider any vote shall be entertained at any town meeting, unless such proposition to reconsider shall be made within one hour from the time such vote shall have been passed, or the motion for such reconsideration shall be sustained by a number of votes equal to a majority of all the names entered on the poll list at such election up to the time such motion shall be made.

SECTION 26. The polls of the election shall be opened between the hours of nine and ten o'clock in the forenoon, and closed at five o'clock in the afternoon, and the inspectors shall cause proclamation to be made at each opening of the polls, and at any adjournment thereof, and proclamation in like manner, at least one hour before the final closing of the polls, specifying the hour at which the polls of the election will be closed.

SECTION 27. All town officers shall be chosen by ballot, except overseers of highways, who may be chosen in such manner as the electors, at any town meeting, shall direct.

SECTION 28. In the election of officers to be chosen by ballot, the names of all the persons voted for shall be on one ballot, and the offices to which such persons are intended to be chosen shall

<sup>1</sup> The clerk's record of the proceedings of a town meeting will be taken as evidence of the facts therein set forth, as transpiring at that meeting.—[*Briggs v. Murdock*, 13 Pick., 306.

#### *Form of poll list report at town meeting.*

A correct poll list kept at a town meeting held at \_\_\_\_\_ in the town of *Berlin* and county of *Marquette*, on the \_\_\_\_\_ day of \_\_\_\_\_ 18—, containing the names of all persons voting at such meeting.

No.	Names.	No.	Names.
1.	<i>F. B. Peck.</i>	3.	<i>Isaac Morris.</i>
2.	<i>Elisha Andrews.</i>	4.	<i>Orange G. Buell.</i>

Total number of ballots, 4.

G. ALLARD, town clerk.

NOTE.—As a matter of convenience, it is well to enter the number of voters in the margin, as the list progresses.

be designated thereon; but no such ballot shall contain a greater number of names, as designated to any office, than there are persons to be chosen at such election to fill such office; and such ballots shall be received and kept as is required at general elections.

**SECTION 29.** If a person offering to vote is challenged as unqualified by any elector, or by one of the inspectors of the election, one of the inspectors shall tender to him the following oath or affirmation:—

You do swear, [or affirm,] that you will fully and truly answer all such questions as shall be put to you touching your place of residence and qualifications as an elector at this election. S. L. 1867. ch. 85.

*First.* If the person be challenged as unqualified on the ground that he is not a citizen, and hath not declared his intention to become a citizen, the inspectors, or one of them, shall put the following questions:—

1. Are you a citizen of the United States? If no, then—
2. Have you declared your intention to become a citizen of the United States, conformably to the laws of the United States?
3. When and where did you declare your intentions to become a citizen of the United States?

*Second.* If the person be challenged as unqualified on the ground that he has not resided in this state for one year immediately preceding the election, the inspectors, or one of them, shall put the following questions:—

1. How long have you resided in this state immediately preceding this election?
2. Have you been absent from this state within the year immediately preceding this election? If yes, then—
3. When you left did you leave for a temporary purpose with the design of returning, or for the purpose of remaining away?
4. What state or territory did you regard as your home while absent?
5. Did you, while absent, vote in any other state or territory?

*Third.* If the person be challenged on the ground that he is not a resident of the county, town, or ward where he offers his vote, the inspectors, or one of them, shall put the following questions:—

1. When did you last come into this county, town, or ward?
2. Did you come for a temporary purpose merely, or for the purpose of making it your home?
3. Did you come into this county for the purpose of voting in this county?
4. Are you now an actual resident of this township or ward; and what is the particular description, name, and location of your place of residence?

*Fourth.* If the person be challenged as unqualified on the ground that he is not twenty-one years of age, the inspectors, or one of them, shall put the following question:—

1. Are you twenty-one years of age to the best of your knowledge and belief?

The inspectors of election, or one of them, shall put all other questions to the person challenged, under the respective heads aforesaid, as may be necessary to test his qualifications as an elector at that election.

**SECTION 30.** If the person challenged shall refuse to answer

to answer fully,  
vote to be  
rejected.

S. L. 1857, ch. 85.

If challenge not  
withdrawn,  
oath to be ten-  
dered.

Id.

fully any of the foregoing questions, or any other question touch-  
ing his qualifications as an elector at that election, the inspectors  
shall reject his vote.

SECTION 31. If the challenge be not withdrawn after the per-  
son offering to vote shall have answered the questions put to him  
as aforesaid, one of the inspectors shall tender to him the follow-  
ing oath :—

You do solemnly swear, [or affirm, as the case may be,] that you are  
twenty-one years of age; that you are a citizen of the United States, [or that  
you have declared your intention to become a citizen, conformably to the laws  
of the United States on the subject of naturalization;] that you have resided  
in this state one year next preceding this election; that you are now a resi-  
dent of this town, [or ward, as the case may be;] that you have not voted at  
this election; and that you have not made any bet or wager, or become  
directly or indirectly interested in any bet or wager, depending upon the result  
of this election.

If he refuse oath,  
vote shall be re-  
jected.

Id.

When vote is  
received, after  
oath taken,  
clerk shall write  
"sworn," &c.

Id.

If oath taken,  
vote received.

Id.

Powers and du-  
ties of chairman  
of town meeting.

SECTION 32. If any person shall refuse to take the oath or  
affirmation so tendered, his vote shall be rejected.

SECTION 33. Whenever any person's vote shall have been re-  
ceived after having taken the oath provided in the thirty-first  
section of this chapter, it shall be the duty of the clerks of the  
election to write on the poll book, at the end of such person's  
name, "sworn."

SECTION 34. If any person so offering to vote shall take such  
oath, his vote shall be received.

SECTION 35. The chairman of each town meeting shall regu-  
late its proceedings and decide all questions of orders arising at  
such meeting, and shall make public declaration of all votes  
passed; he shall possess authority to enforce obedience to his lawful  
requirements; and if any person, at such meeting, shall conduct  
himself in a disorderly manner, and after notice from the chair-  
man shall persist therein, the chairman may order him to with-  
draw from the meeting; and, on his refusal, may order any  
constable or other person to take him into custody until the meet-  
ing shall be adjourned.<sup>1</sup>

SECTION 36. In addition to the provisions of the preceding  
section, the inspectors or chairman shall have the same authority  
to preserve order, to enforce obedience, and to commit for dis-  
orderly conduct, as is possessed by the board of inspectors at a  
general election.

SECTION 37. All questions upon motions made at a town  
meeting shall be determined by a majority of the electors voting.

#### CANVASS OF VOTES.

Canvass, when  
and how made.

SECTION 38. At the close of every election, the votes given  
by ballot shall be publicly canvassed, by the inspectors, at the  
place where the meeting was held; which canvass, when com-  
menced, shall be continued without adjournment or intermission,  
until the same shall be completed.<sup>2</sup>

<sup>1</sup> The order of the chairman to take a person from the meeting, for disorderly conduct,  
need not be in writing, but may be given to the constable, or other person, verbally.—[*Par-  
son v. Brainard*, 17 Wen., 522.]

<sup>2</sup> When there is a doubt as to the individual meant to be voted for, on account of the mis-

SECTION 39. Before the ballots are opened, they shall be counted and compared with the number of names of voters on the poll list; and if two or more ballots shall be found folded together, and the inspectors shall be satisfied from their appearance, and from a comparison of the number of votes given with the number of names on the poll list, that the ballots so folded together were given by the same person, they shall be rejected; and if the ballots shall be found to exceed in number the whole number of names on such poll list, they shall be placed in the box from which they were taken, and one of the inspectors shall publicly draw out and destroy, unopened, as many ballots as shall be equal to such excess; the number of ballots and the number of names on the poll list agreeing, or being made to agree, the board shall then proceed to canvass and estimate the votes.

Proceedings to determine correct number of ballots.

SECTION 40. The canvass being completed, and the result ascertained and determined by the inspectors, the clerk shall publicly read to the meeting the names of the persons for whom votes for each office were given, and the number of votes so given to each person, and the names of the persons declared to be duly elected, by the inspectors, to each office respectively; and such reading shall be deemed sufficient notice to every person elected to any office at such meeting, of his election, whose name has been entered on the poll list as a voter.

Clerk to read names of persons voted for, the number of votes, and names of those elected.

Reading to be deemed notice to those voting.

SECTION 41. The inspectors shall also draw up a statement in writing, setting forth in words at full length, the whole number of votes given for each office, the names of the persons for whom such votes were given, and the number of votes given to each person; and certify upon such statement their determination of the persons elected; which statement and certificate of determination shall be left with the town clerk, and recorded in his office.<sup>1</sup>

Statement to be drawn up by inspectors, &c.

spelling of the surname, or the addition of different or erroneous Christian names, facts and circumstances of public notoriety, *dehors* the ballot, connected with the election and the different candidates, are competent as evidence to ascertain for whom the ballots were intended to be cast.—[*Carpenter v. Ely*, 4 Wis. R., 420.]

<sup>1</sup> *Form of statement of inspectors, of result of election at town meeting.*

The following is a statement setting forth the whole number of votes given for each office, the names of the persons for whom such votes were given, and the number of votes given to each person, at an election at a town meeting held at \_\_\_\_\_ in the town of *Lemonwier*, in the county of *Juneau*, on the \_\_\_\_\_ day of \_\_\_\_\_, 18—.

The whole number of votes given for chairman of supervisors was *one hundred and eighty-two*.

The whole number of votes given for supervisors was *three hundred and forty-four*.

[Continue by giving the number of votes for each officer.]

*John Turner* had *one hundred and eighty-two* votes given him for chairman of supervisors.

*Thomas Keefe* had *one hundred and seventy* votes given him for supervisor.

*Thomas Kelly* had *ninety-five* votes given him for supervisor, and—

*D. C. Eldridge* had *seventy-nine* votes given him for supervisor.

A. D. SMITH,  
JOHN SHERWOOD, } inspectors.  
LAFAYETTE BLOOD,

*Form of certificate of determination of persons elected at town meeting.*

Town of *Lemonwier*, ss.

We, the inspectors of the election held at the time and place set forth in the



Persons receiving greatest number of votes to be elected.

When votes equal to be determined by lot.

Town clerk to transmit to clerk of board statement of election.  
S. L. 1851, ch. 67.

SECTION 42. The persons having received the greatest number of votes given for any office at such election, shall be deemed and declared duly elected; and if two or more shall have received the greatest and an equal number of votes for the same office, the inspectors of the election shall determine the choice by lot, (which lots shall be drawn by the persons receiving the equal number of votes, or in the absence of one or both of such persons, or their refusal to draw by lot, the inspectors shall appoint a competent person to draw the same for them,) and shall declare and certify the same accordingly.

SECTION 43. It shall be the duty of the town clerk of each town within this state, within ten days after the holding of the annual town meeting of his town, to transmit to the clerk of the board of supervisors of the county, a certified statement of all officers elected in his town.<sup>1</sup>

#### OF TOWN OFFICERS.

Who eligible to town office.

SECTION 44. No person shall be eligible to any town office unless he shall be an elector of the town for which he shall be chosen.

Certain town officers to take and file oath of office within ten days.

SECTION 45. Every person elected or appointed to the office of supervisor, town clerk, assessor, treasurer, town superintendent of schools, sealer of weights and measures, or constable, within ten days after he shall be notified of his election or appointment, shall take and subscribe before the town clerk, or some other person authorized to administer oaths, an oath to support the constitution of the United States, and the constitution of this state, and faithfully to discharge the duties of his office (naming the same) to the

within statement, subscribed by us, do certify that we have determined that the within named *John Turner* is duly elected to the office of chairman of supervisors of said town, and that *Thomas Keefe* and *Thomas Kelly* are duly elected to the office of supervisors of said town, [continuing according to the facts.]

In witness whereof, we have hereunto set our hands, this \_\_\_\_\_ day of \_\_\_\_\_, 18—.

A. D. SMITH,  
JOHN SHERWOOD,  
LAFAYETTE BLOOD, } inspectors.

NOTE.—This certificate should be indorsed upon the statement. It will be observed that the number of votes in the statement is to be written out in words at full length: figures should not be used.

<sup>1</sup> Form of statement of town officers elected, to be transmitted to clerk of board of supervisors.

The following is a statement of all officers elected in the town of *Mosiner* and county of *Marathon*, at the annual town meeting in said town on the \_\_\_\_\_ day of \_\_\_\_\_, 18—.

Supervisors, *Joseph Desert*, chairman.  
" *John Weeks*.

Town clerk, *John S. Pashley*.

[Giving a list of all the officers elected.]

The foregoing statement I certify to be correct.

In witness whereof, I have hereunto set my hand, this \_\_\_\_\_ day of \_\_\_\_\_, 18—.

JOHN S. PASHLEY, town clerk.

best of his ability; such oath shall be administered without fee, and certified by the officer before whom it was taken, with the date of taking the same; and such person, before entering upon the duties of his office, shall cause said oath so certified to be filed within ten days in the office of the town clerk.<sup>1</sup>

SECTION 46. Within five days after the election of any officers at a town meeting, the town clerk shall transmit to each person elected, whose name shall not be found on the poll list of said election, as a voter, a notice of his election; and if any person chosen or appointed to any town office, of whom any oath or bond is required, shall neglect to file the same within the time prescribed by law, such neglect shall be deemed a refusal to serve in such office.<sup>2</sup>

Clerk to notify person elected, if his name not on poll list.

Neglect to file bond deemed a refusal to serve.

SECTION 47. If any person elected to a town office, of whom an oath or bond is required, shall enter upon the duties of such office before he shall have filed such oath or bond, he shall be fined in a sum not exceeding fifty dollars.

Penalty for entering upon office before oath or bond filed.

SECTION 48. If any person elected to any town office, unless unable from disease or other infirmity to discharge the duties of such office, shall refuse or neglect to serve therein, he shall be liable to a fine of ten dollars; but no person so elected, who shall have served in any town office for the term next preceding such election, shall be liable to such fine for refusing to serve, if he shall have given notice in writing of refusal, to the town clerk, within ten days after having been notified of his election.<sup>3</sup>

Persons refusing or neglecting to serve liable to fine.

When not liable.

SECTION 49. Every town officer elected at an annual meeting, except justices of the peace, shall hold his office for one year, and until his successor is elected and qualified.

Town officers except justices, to hold office one year.

<sup>1</sup> *Form of oath of town officer.*

State of Wisconsin. }  
County of Dane. } ss.

I, *Horace A. Tenney*, being elected superintendent of schools in and for the town of *Madison* in the county of *Dane* and state of *Wisconsin*, do solemnly swear that I will support the constitution of the United States, and the constitution of the state of *Wisconsin*, and faithfully discharge the duties of my said office of superintendent of schools for the town of *Madison*, to the best of my ability.

HORACE A. TENNEY.

I certify that the foregoing oath was taken and subscribed by the said *Horace A. Tenney*, this \_\_\_\_\_ day of \_\_\_\_\_, 18—.

CHARLES L. FERRIS, justice of the peace.

<sup>2</sup> *Form of notice by town clerk to person elected to town office.*

To *David Cormier* :—

Sir: you are hereby notified that at the annual town meeting held in the town of *Howard* and county of *Brown*, on the \_\_\_\_\_ day of \_\_\_\_\_, 18—, you were duly elected to the office of treasurer of said town.

Dated at *Howard*, this \_\_\_\_\_ day of \_\_\_\_\_, 18—.

WM. BATTERSHILL, town clerk.

<sup>3</sup> A person who has been chosen or appointed to a town office, and neglects or refuses to serve, whereby he incurs the penalty imposed by law, cannot be again chosen or appointed to such office, or made liable to a second penalty for the second refusal to act.—[*Haywood v. Wheeler*, 11 Johns., 432.]

It is held that an action for the penalty here imposed will not lie except where the town proceed to a new election; that merely neglecting to qualify, is not sufficient; the object of

Officers elected to fill vacancies, how long to hold.

SECTION 50. Every town officer elected at a special meeting to fill a vacancy, shall hold his office during the unexpired portion of the regular term of such office, and until his successor is elected and qualified.

Penalty for not delivering moneys, &c., to successor.

SECTION 51. Every town officer who shall, after the expiration of his office, neglect or refuse to deliver on demand to his successor in office, after such successor shall have been duly qualified according to law, all moneys, records, books, and papers, or other property appertaining to such office, shall be liable to pay a fine not less than fifty, nor more than two hundred dollars, to be recovered before any court having jurisdiction thereof.

#### OF RESIGNATIONS AND VACANCIES.

Supervisors may accept resignations, &c.

SECTION 52. The board of supervisors of any town, for sufficient cause shown them, may accept the resignation of any town officer, addressed to them in writing; and whenever a resignation shall be accepted by the supervisors, they shall indorse thereon such acceptance, and cause the same to be filed in the office of the town clerk: and when a justice of the peace resigns his office, the clerk shall immediately give notice of such resignation to the clerk of the circuit court of the county.<sup>1</sup>

Whenever justice resigns, clerk to give notice.

When supervisors may make appointment of certain officers.

SECTION 53: Whenever there shall be a vacancy, or when the incumbent shall from any cause be unable to perform the duties of any office to which he may have been elected, except that of justice of the peace and town treasurer, the town board of supervisors may make temporary appointments of suitable persons to discharge the duties of such offices respectively, and such persons so appointed shall take and file the oath of office required by law, and shall discharge the duties thereof until the same is filled by election or the disability is removed.

Shall appoint town treasurer in certain cases.

SECTION 54. If the treasurer of any town shall refuse to serve, or if his office shall become vacant, or if he shall be unable from sickness or any other cause to perform the duties of his office, the board of town supervisors shall forthwith appoint a treasurer for the remainder of such term of office; and the person so appointed shall take and file the oath of office, and shall give the like security,

the law being to enforce the performance of the duties, and if the town proceed to a new election, or appointment, then to exact the penalty.—[*Winnegar v. Rae*, 1 *Coven*, 258.]

#### <sup>1</sup> Form of resignation of town officer.

To *George Miller*, chairman, *Henry Knapp*, and *E. B. Thrall*, composing the board of supervisors of the town of *Utica* in the county of *Winnebago*.

By reason of [*here state the cause*] I find it necessary to resign my office of assessor of said town of *Utica*; I do therefore resign my said office, and tender you this my resignation, and ask that the same may be accepted.

Dated at *Utica*, this \_\_\_\_\_ day of \_\_\_\_\_, 18—.

THOS. STEVENSON.

*Form of acceptance, to be indorsed on resignation of town officer.*

We do accept of the within resignation of *Thomas Stevenson*, this \_\_\_\_\_ day of \_\_\_\_\_, 18—.

GEORGE MILLER, }  
HENRY KNAPP, } supervisors.  
E. B. THRALL, }

and be subject to like duties and responsibilities, and have the same powers and compensation, as the treasurer in whose place he was appointed, but such appointment shall not exonerate the former treasurer or his sureties from any liability incurred by him or them.

#### NEW ORGANIZATION OF TOWNS.

SECTION 55. When a new town shall be organized, if there be one or more justices of the peace residing therein, they shall be deemed justices thereof, and shall hold their offices according to their respective terms, and only so many justices shall be chosen as shall be necessary to make up the number of four in such town.

When new town organized, justices in same to continue in office, &c.

SECTION 56. The town clerk, within six days after the election of justices of the peace, in any such town, shall give notice in writing to the justices elected, to meet at such time and place as shall be specified in the notice, for the purpose of determining by lot the terms of office of such justices, which notice shall be given not less than six nor more than twelve days previous to the time appointed therein for such meeting.<sup>1</sup>

Clerk to notify justices elected in new towns to meet and draw lots.

SECTION 57. At the time and place so appointed the town clerk shall cause to be written on separate pieces of paper, as near alike as practicable, the numbers one, two, or such and so many of each such number as shall correspond with the vacant terms of office to be supplied, and shall cause such papers to be folded up as nearly alike as practicable and deposited in a box, and the persons so elected justices shall severally draw one of said pieces of paper, if such person shall be present and consent to such drawing, otherwise the lots shall be drawn by the inspectors, and the term of office of each such justice shall be determined by such drawing, and each shall hold his office for such number of years as shall correspond with the number by him so drawn.

Lots how to be drawn.

SECTION 58. If any person elected a justice of the peace shall neglect to attend at the time and place specified in such notice, the town clerk shall select some qualified elector of the town to draw for such justice, in the manner prescribed in the preceding section, and the number drawn by such elector shall be a lawful determination of the term of office of said justice.

If justice neglect to attend, clerk to elect person to draw for him.

SECTION 59. The town clerk shall make duplicate certificates of such drawing and the result thereof, one of which certificates shall be filed and recorded in his office, and the other he shall transmit to the clerk of the circuit court of the county;<sup>2</sup> if the

Clerk to make duplicate certificates of drawing, &c.

<sup>1</sup> Form of notice by town clerk to justices to determine, by lot, term of office.

To H. J. Sill and J. G. Foster.

You, and each of you, having been elected to the office of justice of the peace for the town of *Arlington*, in the county of *Columbia*, are requested to meet on the — day of —, 18—, at the hour of — o'clock, — M., at —, for the purpose of determining, by lot, the terms of your said offices.

Dated at *Arlington*, this — day of —, 18—.

WINSLOW BULLEN, town clerk.

<sup>2</sup> Form of town clerk's certificate of drawing by justices for term of office.

County of *Columbia*. } ss.  
Town of *Arlington*. }

I hereby certify that on the — day of —, 18—, at —, in said town,

county is not organized for judicial purposes, the said certificates shall be filed with the clerk of the board of supervisors.

When county not divided into towns, to be considered as one town, &c.

SECTION 60. Whenever any organized county shall not be divided into towns, such county shall, for the purposes of town government, until so divided, be considered as one town, and may elect town officers, whose powers and duties shall be the same as town officers' in other towns, and each county may elect as many justices of the peace as under the county system of government they were authorized to elect.

#### OF SUPERVISORS.

Certain powers of supervisors.

SECTION 61. The supervisors of each town shall have charge of such affairs of the town as are not by law made the duty of other town officers; and they shall have power to draw orders on the town treasurer, for the disbursement of such sums as may be necessary for the purpose of defraying the incidental expenses of the town, and all moneys raised by the town to be disbursed for any other purpose, except moneys for the support of schools.

To be commissioners of highways and overseers of poor.

SECTION 62. They shall, by virtue of their office, be the commissioners of highways and the overseers of the poor in their towns.

Chairman to attend county board.

SECTION 63. The chairman of the supervisors of each town shall attend the annual meeting of the board of supervisors of the county, and every adjourned and special meeting of such board; and if, from sickness or other cause, such chairman shall be unable to attend any such meeting of the board, either of the other supervisors of the town may attend such meeting, and act as a member of such board; and if they disagree as to which of them shall act as such chairman, then they shall decide the same by lot.

To prosecute suits for town and sue for penalties, &c.

SECTION 64. The supervisors of each town shall, by their name of office, prosecute for the benefit of the town, all actions upon bonds and sureties given to them, or their predecessors in office; and shall also sue for and collect all penalties and forfeitures imposed in this chapter, in respect to which no other provision is made, which shall be incurred by any officer or inhabitant of the town; and they shall have power, in like manner, to prosecute for any trespass committed on any public building, enclosure, or property, belonging to the town, and shall pay all moneys collected under this section to the town treasurer.

Two of supervisors to constitute a quorum.

SECTION 65. Any two of the supervisors may in all cases constitute a quorum for the performance of any duties required by law of the town supervisors, except when otherwise provided.

a drawing of lots was duly had by *H. J. Sill* and *J. G. Foster*, justices of the peace elect for said town, to determine their terms of office. That the said *H. J. Sill* drew the term of one year, and the said *J. G. Foster* drew the term of two years.

In witness whereof, I have hereunto set my hand, this — day of —, 18—.

WINSLOW BULLEN, town clerk.

## OF TOWN CLERK.

SECTION 66. The town clerk of each town shall have the custody of the records, books, and papers of the town, when no other provision is made by law; and he shall duly file, and safely keep, all certificates of oaths, and other papers, required by law to be filed in his office, and record such as are by law required to be recorded therein. Duties of town clerk.

SECTION 67. He shall transcribe in the book of records of his town, minutes of the proceedings of every town meeting held therein, and he shall enter in such book every order or direction, and all rules and regulations, made by any such town meeting; he shall also file and preserve all accounts audited by the town board, or allowed at a town meeting, and enter a statement thereof in such book of records.

SECTION 68. Every person hereafter elected or appointed to the office of town clerk, in any of the towns of this state, shall, before he enters upon the duties of his office, and within the time prescribed by law for filing his oath of office, execute an instrument in writing with two or more sufficient sureties, to be approved by the town treasurer, which writing shall be in substance as follows:— To give an undertaking, within time prescribed for filing official oath. S. L. 1852, ch. 197.

“A. B., chosen [or appointed] town clerk, in the town of ——— and C. D. and E. F., his sureties, do hereby agree to pay to the said town, or to each and every person who may be entitled thereto, all damages which said town, or person or persons, may sustain by reason of the loss of any chattel mortgage, or other paper required by law to be filed and kept in the office of said clerk, or by reason of neglect to perform or unfaithful performance of official duty by said clerk.”

SECTION 69. The town treasurer shall indorse on such instrument his approval of the sureties therein named, and file the same in his office, and a copy of such instrument, certified by the town treasurer, shall be *prima facie* evidence of the execution thereof, by such town clerk, and his sureties, in any court in this state. Town treasurer to indorse his approval, &c. Id.

SECTION 70. The said town, or any person or persons, sustaining damage by reason of the loss of any paper mentioned in the sixty-eighth section of this chapter, or the neglect to perform or unfaithful performance of any duty therein mentioned, may sue for and recover such damage in a civil action against said clerk and his sureties, in any court having jurisdiction of similar actions between other parties: *provided*, that all actions against a town clerk and his sureties, upon any such instrument, shall be prosecuted within four years after the expiration of the year for which the town clerk named therein shall have been elected. Persons sustaining damage by loss of papers may maintain action on undertaking, &c. Id.

SECTION 71. Every town clerk, immediately after the qualifying of any constable chosen or appointed in his town, shall transmit to the clerk of the circuit court of the county, the name of such constable. To transmit names of constables to clerk of court.

SECTION 72. Each town clerk shall, immediately after the

<sup>1</sup> *Form of town treasurer's approval of sureties on town clerk's bond.*

I do approve of the sureties on the within bond. Witness my hand, this — day of —, 18—,

A. B., town treasurer.

Notice of election of justices to clerk of court.

election of any justices of the peace in his town, transmit a written notice thereof to the clerk of the circuit court of the county, stating therein the names of the persons elected, and the terms for which they were respectively elected; and if one or more of them has been elected to fill a vacancy, he shall state in such notice who was the last incumbent of the office.<sup>1</sup>

Town clerk may appoint deputy, and his powers and duties.

SECTION 73. Each town clerk may, after entering upon the duties of his office, appoint a deputy, who shall take the oath of office, and file the same with the clerk; and in case of the absence, sickness, or other disability of the clerk, such deputy shall perform the duties of such clerk, and receive the same compensation that the clerk would have been entitled to receive.

Copies of papers and records in his office to be evidence.

SECTION 74. Copies of all papers duly filed in the office of the town clerk, and transcripts from the town book of records, certified by him, shall be evidence in all courts, in like manner as if the originals were produced.

To post up copies of by-laws, and make entry of same.

SECTION 75. It shall be the duty of the town clerk to post up in three of the most public places in his town, copies of all by-laws made by such town, and he shall make an entry in the town records, of the time when, and the places where, such by-laws were posted up.

To execute conveyances of land belonging to town.

SECTION 76. The town clerk shall execute, in his name of office, and under his hand and seal, all conveyances of land belonging to the town, whenever the same shall be sold in pursuance of an order of the town.

No execution to issue against town.

SECTION 77. No execution shall issue on any judgment against a town, nor shall any action be brought thereon; but the same shall be collected in the manner hereinafter provided in this chapter.

B. L. 1857, ch. 30.

How judgment against a town to be collected.

SECTION 78. Whenever an exemplified copy of any final judgment, rendered by any court of this state, against any town in this state, together with an affidavit of the plaintiff in such judgment, his assignee, or his attorney, stating that said judgment has not been reversed, appealed from, or removed to any other court, or paid, or satisfied in whole or in part, shall be filed in the office of the town clerk of the town against which such judgment may have been rendered, it shall be the duty of the town clerk with whom the certificate of the judgment as aforesaid shall have been filed, to proceed to assess the amount thereof, with interest from the date of such judgment to the time when the warrant for the collection thereof will expire, upon the taxable property of said town, placing the same on the next town assessment and tax roll, in a separate column; and the same proceedings shall be had thereon, and the

Id.

<sup>1</sup> Form of notice by town clerk to clerk of circuit court, of election of justices of the peace.

To the clerk of the circuit court of the county of Columbia.

The following are the names of the persons elected to the office of justices of the peace in the town of Wyocena in said county of Columbia, at the annual town meeting on the — day of —, 18—, and the terms for which they were respectively elected, to wit:—

J. A. Burt, — years.

J. W. Earle, — years.

Dated at Wyocena, this — day of —, 18—.

SETH A. COOLEGE, town clerk.

same shall be collected and returned in the same manner as other town taxes, and shall be paid to the party entitled thereto.

#### OF TOWN BOARD.

SECTION 79. The supervisors of each town shall constitute a town board for the purpose of auditing all accounts payable by such town; and if from any cause, there shall not be three supervisors present, to constitute said board, the chairman, or in his absence either of the other supervisors, may notify any one or so many of the justices of the town as together with the supervisor or supervisors present shall make a board of three; and the board so constituted shall have authority to act as the town board.

Town board to consist of supervisors.  
If part absent, justices may act.

SECTION 80. The town board shall meet annually, on the Tuesday next preceding the annual town meeting to be held in such town, for the purpose of auditing and settling all charges against the town; and they shall state on each account the amount allowed by them; but no allowance shall be made for any account which does not specifically state each item of the same, and the nature thereof.

When to meet and for what purpose.  
Not to allow accounts unless specific.

SECTION 81. The said board shall also, at their annual meeting in each year, examine and audit the accounts of the town treasurer and the town superintendent of schools, for all moneys received and disbursed by them as such officers; and they shall audit the accounts of all other town officers who are authorized by law to receive or disburse any money of the town, by virtue of their office.

To audit annually, accounts of treasurer and superintendent.

SECTION 82. Such board shall draw up a report, stating in detail the items of account audited and allowed, the nature of each account, and the name of the person to whom such account was allowed; such report shall be accompanied by a statement of the fiscal concerns of the town, and an estimate of the sum necessary for the current expenses thereof, the support of the poor, and other incidental expenses for the ensuing year.<sup>1</sup>

To make annual report.

<sup>1</sup> Form of annual report of town board, detailing accounts audited.

At a meeting of the town board of the town of *Kingston*, in the county of *Sauk*, on the — day of —, 18—, the following accounts were audited and allowed by said board, to wit:—

To *James I. Waterbury*, for [state nature of account,] - - - \$25.00

" *C. N. Barber*, for [state nature of account,] - - - 30.00

[Giving the name of each person to whom an account is allowed, and the amount.]

Total amount audited and allowed, \$55.00

Dated this — day of —, 18—.

THOS. D. LANG,  
HIRAM HOUGHTON, } town board.  
A. HALL,

*Form of statement of fiscal concerns of town, to accompany annual report of town board.*

A statement of the fiscal concerns of the town of *Kingston*, in the county of *Sauk*, for the year ending —, 18—, and an estimate of the sum necessary for the current expenses for the ensuing year:—

Balance in the hands of town treasurer, - - - \$500.00

There is due to the town for fines and penalties from various persons, and which is expected to be paid within the next sixty days, the sum of - - - 150.00

[Giving a full statement of the resources of the town, also its debts and liabilities.]

\$650.00



Same to be read  
at town meeting,  
and may be  
referred.

SECTION 83. Such report shall be produced, and publicly read by the town clerk, at the next ensuing town meeting; and the whole or any portion of such report may be referred, by the order of such meeting, to a committee, whose duty it shall be to examine the same and report thereon to such meeting.

Town orders for  
accounts allow-  
ed, how issued  
and paid.

SECTION 84. The amount of any account audited and allowed by the town board, and the amount of any account voted to be allowed at any town meeting, shall be paid by the town treasurer, on the order of the board, signed by the chairman, and countersigned by the clerk; and all orders issued to any person or persons by the town board, for any sums due from such town, shall be receivable in payment of town taxes in said town.

Receivable for  
town taxes.

Town clerk to be  
clerk of board,  
and his duties as  
such.

SECTION 85. The town clerk shall be the clerk of the town board, and shall keep a true record of all their proceedings in his office; he shall file in his office all accounts audited by the town board, and preserve the same for the inspection of any of the inhabitants of the town.

#### OF TREASURER.

Duties of town  
treasurer.

SECTION 86. The town treasurer shall receive and take charge of all moneys belonging to the town, or which are by law required to be paid into the town treasury, and shall pay over and account for the same, upon the order of such town, or the officers thereof, duly authorized in that behalf, made pursuant to law, and shall perform all such other duties as may be required of him by law.

To execute bond  
to be approved  
by chairman.

SECTION 87. Each town treasurer, within the time limited for filing his oath of office, and before entering upon the duties of his office, shall execute a bond to the supervisors of the town, in such sum and with such sureties as the chairman of supervisors shall require and approve, conditioned for the faithful discharge of the duties of his office, and that he will faithfully and truly account for and pay over, according to law, all moneys which shall come into his hands as such treasurer; and the said supervisor shall indorse his approval thereon, and file the same in the office of the town clerk.<sup>1</sup>

The sum necessary for the current expenses of the town for the ensuing year, is estimated at - -	\$600.00
The sum necessary for the support of the poor for the ensuing year, is estimated at - - - -	150.00
Other incidental expenses, - - - -	100.00
	<hr/>
Cash on hand and amount available, - - - -	\$850.00
	650.00
	<hr/>
Leaving amount to be provided for, - - - -	\$200.00
Dated at Kingston this — day of —, 18—.	

THOS. D. LANG,  
HIRAM HOUGHTON, } town board.  
A. HALL,

<sup>1</sup> Form of town treasurer's bond.

Know all men by these presents, that we, James McCarty, and Moritz Martini, and Edward Welch, of the town of Port Washington, in the county of Ozaukee, and state of Wisconsin, are held and firmly bound unto the supervisors of

**SECTION 88.** Every town treasurer shall keep a true account of all moneys by him received by virtue of his office, and the manner in which the same is disbursed, in a book to be provided at the expense of the town for that purpose; and exhibit such account, together with his vouchers, to the town board at its annual meeting for such adjustment; and he shall deliver all books and property belonging to his office, and the balance of all moneys in his hands as such treasurer, to his successor in office, on demand, after such successor shall have qualified according to law.

To keep account of moneys, and exhibit same for adjustment.

To deliver to successor books, &c.

**SECTION 89.** The town treasurer of each town shall, by virtue of his office, be the collector of taxes for his town, and shall perform the duties of such office as prescribed by law.

To be town collector.

**SECTION 90.** It shall be the duty of the town treasurer of each town in the several counties of this state to make out in writing a statement of the amount of money by him received in his said capacity of treasurer, and which he has or ought to pay over to the treasurer of his county, in which statement he shall set forth particularly the person, officer, or officers, respectively, from whom he has received any such money, the amount so received from each person and officer, and for what the same was so paid to him, with the date of each payment; he shall also set forth the amount which he has paid over to the county treasurer, and for which he has the receipt of such treasurer.<sup>1</sup>

To make out statement of all moneys received as treasurer.

S. L., 1862, ch. 410.

said town of *Port Washington*, in the sum of — dollars, for which sum well and truly to be paid, we bind ourselves, our heirs, executors, and administrators, and each of them, firmly by these presents, sealed with our seals, and dated this — day of —, 18—.

The condition of the above obligation is such, that, whereas, the above bounden *James McCarty* was at the annual town meeting, for the year 18—, elected treasurer of said town of *Port Washington*: now if the said *James McCarty* shall faithfully discharge the duties of his said office, and shall faithfully and truly account for and pay over according to law, all moneys which shall come to his hands as such treasurer, then this obligation to be void; otherwise to remain in full force and effect.

JAMES McCARTY, [L. S.]  
MORITZ MARTINI, [L. S.]  
EDWARD WELCH, [L. S.]

*Form of chairman of supervisors' approval of town treasurer's bond.*

I do approve of the within bond.

Dated this — day of —, 18—.

A. KILGOW, chairman of supervisors.

<sup>1</sup> *Form of annual statement of town treasurer of account with county treasurer.*

A statement showing the amount of money received by *H. H. Bailey* as town treasurer of the town of *Eastman*, in the county of *Crawford*, required to be paid over to the treasurer of said county, since the date of last statement to the present time.

Amount of money received as town treasurer to be paid over to county treasurer, - - - - - \$600.00

From whom received.	Am't rec'd.	For what paid.	Date of payment.

Statement to be made annually.  
S. L., 1852, ch. 410.

SECTION 91. Such statement shall be made in each and every year, on the Saturday next preceding the annual session of the county board of supervisors of such county, and the same shall include all moneys so by such town treasurer received and paid over, for and during the year next preceding such Saturday.

Like statement to be made at expiration of term of office.

SECTION 92. The like statement, as above provided for, shall be made by each town treasurer upon the expiration of his term of office, or a resignation thereof, which shall contain the amount of money by him received and paid over, as contemplated by the ninetieth section of this chapter, and of and concerning which he has not previously made such statement.

Id.

Statements to be in duplicate, officially certified, &c., and filed with town clerk.

SECTION 93. All statements made as contemplated in this chapter shall be made in duplicate, and officially certified (or be under oath) by such town treasurer, that the same is in all respects true and correct, and that the same contains the true and full amount of money by him so received for and during the period of time for which he should make such statement; all and every such certified duplicate statements shall be, by the treasurer making the same, filed with the town clerk of his town immediately after the same shall be so made out.<sup>1</sup>

Id.

Chairman of town supervisors to file one of such statements with clerk of county board.

SECTION 94. The chairman of the board of town supervisors of each town, or other supervisor in the place of such chairman, who shall attend the annual session of the county board of supervisors as a member thereof, shall, at each annual session of such county board, take one of each such duplicate statements and file the same with the clerk of such county board, who shall carefully preserve the same.

Id.

Penalty for neglect of duty.

SECTION 95. Each and every person holding the office of town treasurer, who shall refuse or neglect to comply with the provisions of this chapter, shall forfeit not less than ten dollars nor more than two hundred dollars, to be recovered in any court of record in this state, the amount to be fixed by the jury trying the cause, or by the court if there be no jury empaneled in such case, and may be recovered by a civil action in the name of any person who will prosecute for the same, with costs of suit, one-half of which shall go to the person so prosecuting, and the remainder to the town of which such delinquent is or has been treasurer.

Id.

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The amount paid over to the county treasurer, and for which said town treasurer has the proper receipts, is - - - \$600.00  
Dated this — day of —, 18—.

H. H. BAILEY, town treasurer.

<sup>1</sup> Form of treasurer's certificate to be attached to foregoing statement.

County of *Crawford*. }  
Town of *Eastman*. }

I do hereby certify, that the foregoing [or annual] statement by me made, contains the true and full amount of money by me received for and during the time for which such statement is required by law to be made, being from the — day of —, 18—, to the — day of —, 18—.

In witness whereof, I have hereunto set my hand, this — day of —, 18—.

H. H. BAILEY, town treasurer.

## OF CONSTABLES.

SECTION 96. Every person elected or appointed to the office of constable, before he enters upon the duties of his office, and with-  
 in the time prescribed by law for filing his oath of office, shall execute an instrument in writing, with two or more sufficient sureties, to be approved by the town clerk, which writing shall in substance be in the following form :—

Constables to give security in writing.

"A. B., chosen [or appointed] a constable in the town of ———, and C. D. and E. F., as his sureties, do hereby jointly and severally agree to pay to each and every person who may be entitled thereto, all such sums of money as the said constable may become liable to pay for or on account of any moneys which may come into his hands by virtue of his office, or for the neglect of any official duty.

"Dated the ——— day of ———, 18—.

Executed in presence of  
 L. M., town clerk.

A. B.  
 C. D.  
 E. F."

SECTION 97. The town clerk shall indorse on such instrument his approval of the sureties therein named, and shall file the same in his office, and a copy of such instrument, certified by the town clerk, shall be presumptive evidence in all courts of the execution thereof by such constable and his sureties; and all actions against a constable or his sureties, upon any such instrument, shall be prosecuted within two years after the expiration of the year for which the constable therein named shall have been elected.<sup>1</sup>

Town clerk to approve and file security.

Suits thereon to be prosecuted within two years.

SECTION 98. Any constable may serve any writ, process, or order, lawfully directed to him, within his county.

Constables to serve process.

SECTION 99. Constables shall be ministerial officers of justices of the peace, and shall attend upon sessions of the circuit courts in their respective counties, when notified for that purpose by the sheriff.

To be ministerial officers of justices and to attend circuit courts.

## OF JUSTICES OF THE PEACE.

SECTION 100. Justices of the peace, after the first election under the provisions of this chapter, shall severally hold their offices for two years from and after the first Monday in May next succeeding their election, except when elected to fill a vacancy in office occurring before the expiration of the legal term of two years, and when elected to fill a vacancy they shall hold during the unexpired portion of such term.

How long justices to hold their office.

SECTION 101. At the first town meeting held under the provisions of this chapter, there shall be elected in each town four justices of the peace, two of whom shall hold their offices for the term of two years, and two of whom shall hold their offices for the term of one year; and the justices so elected shall meet at the office of the town clerk on the second Monday next succeeding their election, between the hours of two and four o'clock on that day, and determine by lot their respective terms of office.

Four justices to be elected at first town meeting.

When and where to determine their terms by lot.

<sup>1</sup> Form of town clerk's approval of sureties on constable's bond.

I do approve of the sureties named in the within instrument in writing. Witness my hand, this ——— day of ———, 18—.

C. D., town clerk.

Proceedings in drawing lots.

SECTION 102. At such time and place, the town clerk shall prepare four separate pieces of paper, as near alike as practicable, on two of which shall be written the number "one," and on two of which shall be written the number "two," and he shall cause them to be folded up alike, as near as practicable, and deposited in a box, and the persons elected justices shall severally draw one of the said pieces of paper, and the term of office of each such justice shall be determined by such drawing, and each shall hold his office for the number of years corresponding with the number by him so drawn.

If justice neglect to attend, town clerk to appoint an elector to draw for him.

SECTION 103. If any person elected a justice of the peace shall neglect to attend at the time and place specified in the preceding sections, the town clerk shall select some qualified elector of the town to draw for said justice, in the manner prescribed in the preceding section, and the number drawn by such elector shall be a lawful determination of the term of office of said justice.

Clerk to make duplicate certificates, and transmit one to clerk of court.

SECTION 104. The town clerk shall make duplicate certificates of such drawing, and the result thereof, one of which certificates shall be filed and recorded in his office, and the other he shall transmit to the clerk of the circuit court of the county.

When justices to take oath of office.

SECTION 105. Each justice elected to fill a vacancy shall, within ten days after notice of his election, and each justice elected at the first election under the provisions of this chapter, and each justice thereafter elected for the full term of two years, shall, on or before the first Monday in May next succeeding his election, take and subscribe his oath of office, before some officer authorized to administer oaths, and cause the same to be filed with the clerk of the circuit court of the county.

To give security in writing.

SECTION 106. Every justice of the peace, before he enters upon the duties of his office, and within the time limited by law for filing his oath of office, shall execute an instrument in writing, with two or more sufficient sureties, to be approved by any two of the supervisors, which writing in substance shall be in the following form:—

"A. B., chosen a justice of the peace in the town of ———, and C. D. and E. F. as his sureties, do hereby jointly and severally agree to pay, on demand, to each and every person who may be entitled thereto, all such sums of money as the said justice may become liable to pay on account of moneys which may come into his hands by virtue of his office.

"Dated the ——— day of ———, 18—.

Executed in presence of

L. M., supervisor.

A. B.

C. D.

E. F."

To be approved and filed.

SECTION 107. The approval of the sureties therein named, by the two supervisors, aforesaid, shall be indorsed upon such instrument, and the said justice shall cause the same to be filed in the office of the clerk of the circuit court of the county; and a copy of such instrument, duly certified by such clerk, shall be presumptive evidence of the contents and execution thereof.

Copy to be evidence.

In counties not organized for judicial purposes, certain papers to be filed with clerk of the

SECTION 108. All certificates and other papers, required by this chapter to be filed in the office of the clerk of the circuit court, shall, in those counties not organized for judicial purposes, be filed in the office of the clerk of the board of supervisors, whose certi-

cate, with the county seal attached, shall be presumptive evidence in all courts of record. board of supervisors.

SECTION 109. Whenever, at any town meeting, there shall be a vacancy to be supplied in the office of justice of the peace, and at such election justices of the peace are to be elected for the full term, it shall be necessary to distinguish on the ballots the persons voted for to supply such vacancy. When to distinguish on ballots, persons voted for as justices.

SECTION 110. In all cases where any person has been or shall be duly and properly elected to the office of justice of the peace, but has failed to qualify by taking the oath of office, and giving the security as provided, by and within the time prescribed by law, on account of necessary absence from the county wherein he was so elected, or on account of being sick, the person so elected may qualify as such justice of the peace, at any time within six months from the time of his being so elected, in case the vacancy occasioned by a failure to qualify within the time by law prescribed therefor, as aforesaid, shall not have been within six months filled as by law provided, and that such person shall, in addition to the other requirements, at the time of his so taking the oath of office, take and subscribe an oath that he did not qualify within the time by law prescribed, for the reason that he was sick or absent from the said county, as herein before provided. When person elected justice fails to qualify on account of absence, &c., he may qualify within six months. S. L. 1868, ch. 109.

SECTION 111. The person who shall qualify as provided in the preceding section, may thereupon enter upon the duties and exercise the functions of the office of justice of the peace during the term for which he was elected. To exercise functions of office during term, &c. Id.

#### COMPENSATION OF TOWN OFFICERS.

SECTION 112. Supervisors, assessors, clerks of the polls, and superintendents of schools shall be entitled to a compensation for each day actually and necessarily devoted by them to the service of the town, and in the discharge of any of the duties of their respective offices required of them by law, of one dollar and fifty cents for each day, and at the same rate for parts of a day; and no town officer shall be entitled to pay for acting in more than one official capacity of office at the same time, unless the town shall have fixed a different compensation at the annual town meeting. Supervisors, assessors, &c., entitled to \$1.50 per day as compensation, &c. S. L. 1856, ch. 98.

SECTION 113. The town clerk shall be entitled, for the services required of him by law, to such compensation as the town board shall deem just and proper, unless such compensation shall have been established by a vote of the town at the annual town meeting thereof. Town clerk's compensation to be fixed by town board, unless, &c.

#### OF THE ERECTION OF LAND MARKS.

SECTION 114. The qualified electors of the several townships in any county in this state, are hereby authorized to determine, by vote, at any town meeting hereafter to be held, whether they are in favor of erecting permanent land marks at the corner of sections and quarter stakes in their respective townships or not; providing that previous notice of submitting this question to a vote of the electors has been given as hereinafter stated. Electors to determine by vote as to erecting permanent land marks. S. L. 1857, ch. 88.

Town clerk on request of twelve freeholders to give notice, &c.

S. L. 1857, ch. 83.

Manner of voting.

Id.

If three-fifths vote for permanent land marks, supervisors must cause them to be erected, &c.

Id.

Expense of erecting such land marks, to be raised as other town taxes.

Id.

SECTION 115. It shall be the duty of the town clerk, whenever a request in writing, signed by twelve freeholders of the town, is delivered to him on or before the first day of February in any year hereafter, to bring the question of erecting permanent land marks before the town meeting, to cause a notice to be posted up at five of the most public places in the town, stating therein that the question of erecting permanent land marks will be submitted to a vote of the qualified electors of said town, at the coming town meeting, which notices shall be posted up at least fifteen days before the holding of said town meeting.<sup>1</sup>

SECTION 116. Whenever notice as aforesaid is given by the town clerk, it shall be lawful for the qualified electors of such town to determine, by vote, whether or not permanent land marks shall be established in said town; for this purpose every qualified elector may vote, at such election, a separate ballot, on which shall be written or printed, or partly written and partly printed, the following words: "for erection of permanent land marks, yes;" or "for erection of permanent land marks, no;" which ballots shall be counted and canvassed in the same manner as other ballots for town officers are canvassed.

SECTION 117. Whenever three-fifths of all the votes cast at such an election shall be in favor of the erection of permanent land marks, it shall be the duty of the supervisors of such town to procure, at the expense of said town, a sufficient number of stone monuments, and to make a contract with the county surveyor or any competent surveyor, for the survey of all the sections of said town, and for the erection of said monuments, one at each section corner, and one at each external quarter section, in said town; said stone monuments shall be set at least three feet deep in the ground, and stand at least two feet above the ground; and shall have engraved, those which are set at the section corner, in ciphers, the number of each section for which such stone monument forms a land mark, and those which shall be set at any of the external quarter sections, the following initials:  $\frac{1}{4}$  S.

SECTION 118. If at such an election three-fifths of all the votes cast shall have been polled in favor of the erection of permanent land marks, the board of supervisors of such town are hereby authorized and directed to ascertain, as early as possible,

<sup>1</sup> Form of request of freeholders for permanent land marks.

The undersigned, twelve freeholders of the town of *Hazel Green*, in the county of *Grant*, do request that the question of erecting permanent land marks in said town as provided by law, be brought before the next annual town meeting in said town.

Dated at *Hazel Green*, this \_\_\_\_\_ day of \_\_\_\_\_, 18—.

*Form of notice by town clerk, for submitting question of land marks at town meeting.*

Notice is hereby given, that in accordance with a request in writing, signed by twelve freeholders of the town of *Hazel Green*, in the county of *Grant*, and delivered to the undersigned on the \_\_\_\_\_ day of \_\_\_\_\_, 18—, the question of erecting permanent land marks will be submitted to a vote of the qualified electors of said town, at the coming town meeting.

Dated at *Hazel Green*, this \_\_\_\_\_ day of \_\_\_\_\_, 18—.

JAMES JONES, town clerk.

the amount of money requisite for such a purpose, as nearly as can be, and deliver a statement of such an amount to the town clerk, who shall add the said amount to the various sums voted upon to be raised at the town meeting, and cause the same to be inserted in the tax roll which he delivers to the town treasurer, who shall collect the same like other town taxes, as required by law.

SECTION 119. The board of supervisors shall make an agreement with the county surveyor, or any competent surveyor, what compensation he shall receive for his services in the erection of permanent land marks, and such surveyor, before commencing the survey and erection of permanent land marks in such town, shall give bond to the people of said town in the penal sum of three thousand dollars, conditioned that he will make a correct and true survey of all the sections in said town, and cause such land marks to be set permanently at each corner section, and at each external quarter section, as the same have been established by the government survey, and faithfully perform all the duties enjoined upon him by this chapter.<sup>1</sup>

Board to make contract with surveyor fixing his compensation, &c.

S. L. 1867, ch. 83.

SECTION 120. Whenever the surveyor in his survey comes at variance with the section corners and quarter stakes established by the government survey, he shall, in all such cases, be governed in the erection of permanent land marks by the section corners and quarter stakes established by the survey of the general government, and shall also, in all cases, make correct and full minutes of his survey, containing the exact distance and bearings which each stone monument at the corner of a section has from the external quarter stone monument north, south, east, and west of the same; and also, the exact distance and bearings which each external stone monument has from the two adjacent corner sections; such statement shall be recorded in the office of the register of deeds in the county wherein such town is situated, in a book kept for that purpose, and then filed in the office of the town clerk of said town; such register of deeds shall re-

When his survey varies from government survey, how he must proceed.

Statement to be recorded in office of register of deeds.

<sup>1</sup> Form of surveyor's bond to establish land marks.

Know all men by these presents that we, *Amos Bailey* and *William Bell* and *Harlow Coon*, of the town of *Walworth*, and county of *Walworth*, are held and firmly bound unto the people of said town of *Walworth* in the penal sum of three thousand dollars; for which sum well and truly to be paid, we bind ourselves, our heirs, executors, and administrators, and each of them, firmly by these presents. Sealed with our seals and dated this — day of —, 18—.

The condition of the above obligation is such that whereas the board of supervisors of the said town of *Walworth*, made a contract with the above bounden *Amos Bailey*, for the survey of all the sections of said town, and for the erection of permanent land marks; now if the above bounden *Amos Bailey* shall make a correct and true survey of all the sections in said town, and cause such land marks to be set permanently at each corner section, and at each external quarter section, as the same have been established by the government survey, and faithfully perform all the duties enjoined on him by the statutes concerning the erection of land marks, then this obligation to be void; otherwise to remain in full force and effect.

AMOS BAILEY, [L. S.]  
WILLIAM BELL, [L. S.]  
HARLOW COON, [L. S.]



ceive the same compensation for recording the minutes of such survey, as is fixed by law for recording deeds and other documents.

Monument erected at section corners, &c., to regulate subdivisions, &c.

SECTION 121. Such stone monuments, when erected at the respective section corners and external quarter section stakes, by the surveyors aforesaid, shall be and form points from whence the section lines and quarter section lines are to be derived, and shall also, in all cases, regulate the subdivisions of a quarter section; the territory embraced in such a quarter section may contain the number of one hundred and sixty acres, or more or less, notwithstanding.

Penalty for demolishing stone monument.

SECTION 122. If any person shall willfully demolish or dig out and carry away such a stone monument, erected as a permanent land mark, he shall, on conviction thereof, be punished in the state prison at hard labor, not more than three years, nor less than one year.

## CHAPTER XVI.

R. S. 1858.  
CHAP. 16.  
p. 193.

### OF THE DUTIES OF ASSESSORS IN THE COLLECTION OF STATISTICS.

1858.

Assessors to collect agricultural &c. statistics every two years.

S. L. 1857, ch. 52.

SECTION 1. It shall be the duty of the assessors of the several towns and cities in this state, at the time of making the annual assessment of real and personal property in the year 1859, and once in every two years thereafter, to collect the statistics in their several towns and cities, of all agricultural, mineral, and manufacturing interests, carried on in their respective towns and cities, and make return of the same to the clerk of the county board of supervisors, on or before the first Monday in August, in each year; for which service the several assessors shall be allowed the same rate *per diem* as is allowed for making the assessment, to be audited by the proper authorities of the town, city, or village, in which the duty may have been performed.

1858.

Secretary of state to furnish forms for taking statistics.

S. L. 1857, ch. 52.

SECTION 2. It shall be the duty of the secretary of state, on or before the fifteenth day of April, in each year, to furnish the clerks of the county board of supervisors, of the several counties of this state, a sufficient number of blank forms for taking said statistics, said form to be as follows:—

Apples, bushels, valuation.

Barley, acres, bushels, valuation.

Beans and peas, acres, bushels, valuation.

Boots and shoes, pairs, valuation.

Buckwheat, acres, bushels, valuation.

Butter, pounds, valuation.

Cattle and calves, on hand, number and valuation.

Cattle and calves, slaughtered, number, valuation.

Cheese, pounds, valuation.

Clover seed, pounds, valuation.  
 Copper ore, tons, valuation.  
 Corn, acres, bushels, valuation.  
 Cotton goods, yards, valuation.  
 Flax, pounds, valuation.  
 Grapes, pounds, valuation.  
 Hay, acres, tons, valuation.  
 Hemp, pounds, valuation.  
 Hogs, on hand, number, valuation.  
     do. slaughtered, number, valuation.  
 Horses and mules, number, valuation.  
 Iron, pig, pounds, valuation.  
 Lead, smelted, valuation.  
     do. raised, valuation.  
 Oats, acres, bushels, valuation.  
 Paper, reams or pounds, valuation.  
 Potatoes, acres, bushels, valuation.  
 Rye, acres, bushels, valuation.  
 Sheep and lambs, on hand, number, valuation.  
     do. do. slaughtered, number, valuation.  
 Sugar, pounds, valuation.  
 Timothy and other grass seed, bushels, valuation.  
 Wheat, acres, bushels, valuation.  
 Whiskey, gallons, valuation.  
 Wine, gallons, valuation.  
 Wool, pounds, valuation.

**SECTION 3.** It shall be the duty of the clerks of the county board of supervisors to furnish each town or city assessor with a blank form, on or before the fifteenth day of May in each year.

Clerks of county board to furnish blanks to assessors.

**SECTION 4.** It shall be the duty of the clerks of the board of supervisors, in the several counties annually, on or before the first Monday of September, to transmit to the secretary of state a copy of the foregoing returns.

S. L. 1867, ch. 52. Clerks of county board to transmit to secretary of state copy of returns.

**SECTION 5.** It shall be the duty of the secretary of state to prepare and report to the legislature, annually, a tabular statement of all the agricultural, mineral, and manufacturing products of each county, as shown by the reports required by the first section of this chapter; and he shall also transmit a copy of the same to the commissioner of patents.

Id. Secretary of state to prepare and report tabular statement of statistics.

**SECTION 6.** The assessors of the several towns, wards, or precincts, as the case may be, in the several counties in this state, while performing their duties as assessors, shall ascertain and enter upon a schedule, prepared for that purpose, the names, in full, of each deaf and dumb, blind, insane, and idiotic person, in each town, ward, or precinct, together with the age, color, sex, occupation, and place of birth of said persons; also, the names of parents, in full, of said persons; also, whether said persons are educated or not; also, the number of children of said parents; also, what affinity of blood, if any, exists between said parents; also, the number of deaf and dumb, blind, insane, and idiotic children of said parents; and that said papers be returned to the clerk of the county board of supervisors, with the assess-

Id. Assessors to ascertain and report names of deaf, dumb, blind, insane, and idiotic persons.

S. L. 1867, ch. 34.

Secretary of  
state to furnish  
schedule to  
assessors, &c.

1858.

Penalty for re-  
fusal, &c

ment roll, and by him returned to the secretary of state. The secretary of state shall furnish a schedule, and all necessary papers, for the use of the assessors, accompanied with a printed copy of this chapter: *provided*, that if, in any case, such assessor shall neglect or refuse to make full returns, according to the provisions of this chapter, he shall be subject to a penalty of not less than twenty-five dollars, to be collected in the same manner as other fines are collected for neglect of official duty.

#### *Chapter 51 of Acts of a general nature of 1858.*

Supervisors to  
audit accounts  
of clerks of  
boards.

SECTION 1. It shall be the duty of the board of supervisors of the several counties, to audit the accounts of the clerk of the board of supervisors of the several counties of this state, for the services required of them by chapter fifty-two of the session laws of 1857, (*chapter sixteen of the revised statutes.*)

Approved April 17th, 1858.

## CHAPTER XVII.

### OF FENCES AND FENCE VIEWERS; OF POUNDS AND THE IMPOUNDING OF CATTLE.

#### OF FENCES.

What to be  
deemed a legal  
fence.

1 Wis., 127.

SECTION 1. All fences four and a half feet high, and in good repair, consisting of rails, timber, boards, or stone walls, or any combination thereof, and all brooks, rivers, ponds, creeks, ditches, and hedges, or other things which shall be considered equivalent thereto, in the judgment of the fence viewers within whose jurisdiction the same may be, shall be deemed legal and sufficient fences.

Partition fences.  
Id.

SECTION 2. The respective occupants of lands enclosed with fences, shall keep up and maintain partition fences between their own and the next adjoining enclosures, in equal shares, so long as both parties continue to improve the same.<sup>1</sup>

Neglect to main-  
tain partition  
fence.

SECTION 3. In case any party shall neglect to repair or rebuild any partition fence, which of right he ought to maintain, the aggrieved party may complain to two or more fence viewers of the town, who, after due notice to each party, shall proceed to examine the same, and if they shall determine that the fence is insufficient, they shall signify the same in writing to the delinquent occupant of the land, and direct him to repair or rebuild the same, within such time as they shall judge reasonable; and if such fence shall

<sup>1</sup> The chapter of the revised statutes in relation to fences and fence viewers does not apply to ornamental partition fences between town, village, or city lots; nor does it prohibit parties from contracting for building such fences.

The fences contemplated by that chapter are the ordinary fences of the country, built upon or enclosing agricultural lands.—[*Brooks v. Allen*, 1 Wis. R., 127.]

not be repaired or rebuilt accordingly, it shall be lawful for the complainant to repair or rebuild the same.<sup>1</sup>

SECTION 4. When any deficient fence, built up or repaired by any complainant, as provided in the preceding section, shall be adjudged sufficient by two or more of the fence viewers, and the value of such repairing or building up, together with their fees, shall be ascertained by a certificate under their hands, the complainant shall have a right to demand, either of the occupant or owner of the land where the fence was deficient, double the sum so ascertained; and in case of neglect or refusal to pay the sum so due, for one month after demand thereof made, the plaintiff may recover the same with interest at one *per cent.* a month, in an action for money paid, laid out, and expended.<sup>2</sup>

Double value of repairs may be recovered of delinquent.

<sup>2</sup> Wis., 10.

<sup>1</sup> *Form of determination of fence viewers, directing delinquent occupant to repair fence.*  
To A. B., of the town of *Saratoga* and county of *Wood*.

The undersigned, two of the fence viewers of said town of *Saratoga*, upon complaint made to us by *John Martin* of said town, have examined the partition fence on the line of lands occupied by you and the said *John Martin* in said town, being upon the line which divides sections *one and two*, [describe the line with reasonable certainty,] and have determined that the portion thereof which of right you ought to maintain, being the *south half* of the same, is insufficient: you are therefore directed to repair your said portion of such fence within — days from this date.

Witness our hands, at *Saratoga*, this — day of —, A. D. 18—.

JOHN ENSIGN, } fence viewers.  
THOMAS LAW, }

It is held that any person occupying land, and interested in the making and maintaining a division fence, be his estate or interest in the premises what it may, is entitled to avail himself of the provisions of the statute in reference to division fences; the remedy is not limited to the owner of the fee.—(*Brouk v. Becker*, 17 *Wen.*, 320.)

<sup>2</sup> *Form of certificate of fence viewers, of the value of repairing or building partition fence.*

*Columbia county.* } ss.  
*Town of Newport.* }

Complaint having been made to us, the undersigned, two of the fence viewers of said town of *Newport*, by A. B., that C. D. had neglected to repair [or rebuild] that portion of the partition fence on the line of lands occupied by them, in said town, which the said C. D. of right ought to maintain, we did proceed to examine said fence, and did thereupon determine that the portion thereof which of right ought to be maintained by the said C. D., being [describe the portion of fence in question,] was insufficient, and did upon such determination direct him the said C. D. to repair [or rebuild] said portion of such fence within — days from the date of such our determination, being on the — day of —, 18—; and it appearing to us, that the said C. D. has not repaired [or rebuilt] his proportion of said fence, as directed by us, but that after the time limited for repairing [or rebuilding] the same by the said C. D., the said A. B. did repair [or rebuild] that portion of said fence which the said C. D. ought to maintain.

Now, therefore, on the application of the said A. B., and on due notice to both parties, we the undersigned, two of the fence viewers of said town of *Newport*, having met and examined said fence, have determined and adjudged that the proportion of said fence so directed to be repaired [or rebuilt] by the said C. D., has, on his default, been repaired [or rebuilt] by the said A. B., and that the same is now sufficient, and we certify that the value of such repairing [or building up] is — dollars, and that our fees are — dollars.

Given under our hands, at *Newport*, this — day of —, 18—.

JOHN STOWELL, } fence viewers.  
JACOB FRY, }

Fence viewers to determine controversies relative to partition fences.

2 Wis., 10.

**SECTION 5.** When any controversy shall arise about the right of the respective occupants in partition fences, or their obligation to maintain the same, either party may apply to two or more fence viewers of the town where the lands lie, who, after due notice to each party, may in writing assign to each his share thereof, and direct the time within which each party shall erect or repair his share of the fence, in the manner before provided; which assignment, being recorded in the town clerk's office, shall be binding upon the parties, and upon all succeeding occupants of the lands, and they shall be obliged always thereafter to maintain their respective portions of said fence.<sup>1</sup>

Other party may erect fence in case of neglect, and recover double value.

**SECTION 6.** In case any party shall refuse or neglect to erect and maintain the part of any fence assigned to him by the fence viewers, the same may be erected and maintained by the aggrieved party, in the manner above provided; and he shall be entitled to double the value thereof, ascertained in the manner aforesaid, and to be recovered in like manner.

Division of fences recorded, &c., to be valid.

**SECTION 7.** All divisions of fences made by fence viewers, according to the provisions of this chapter, or which shall be made by owners of adjoining lands, in writing, witnessed by two witnesses, signed, sealed, and acknowledged by the parties making the same, being recorded in the town clerk's office, shall be good and valid against the parties thereto, their heirs and assigns.<sup>2</sup>

<sup>1</sup> Form of writing assigning to each occupant his share of partition fence.

Grant county. }  
Town of Plattville. } ss.

Whereas a controversy having arisen between *A. B.* and *C. D.*, adjoining occupants of lands in said town, in relation to their obligation to maintain [or build] the partition fence between their said lands: now, therefore, upon the application of the said *A. B.* to us the undersigned, two of the fence viewers of said town of *Plattville*, and after due notice to each party, we have and do assign to each party the repairing [or erecting] of said partition fence as follows, [here describe the fence assigned to each occupant, particularly:] and we do direct that each party shall repair [or erect] his share of said fence as above assigned to him, within ——— days from the date hereof.

Given under our hands, at *Plattville*, this ——— day of ———, 18—.

*E. H. MARSHALL,*  
*R. HUNTINGTON,* } fence viewers.

Where either party has voluntarily erected more than his proportion of a partition fence, the fence viewers may assign the portion to be thereafter repaired or maintained by each, and may ascertain the value of that portion of the fence which has been voluntarily erected by the party, beyond his just proportion thereof. But here the power of those officers, in that behalf, ceases.

But the fact of payment or non-payment of the value so ascertained, the fence viewers cannot try or determine.

On suit brought to recover the value of the fence so ascertained by the fence viewers, the defendant may prove payment made either before or after the award of the fence viewers.—[*Butler v. Barlow*, 2 Wis. R., 10.]

<sup>2</sup> Form of agreement to divide and maintain a partition fence between owners of adjoining lands.

This agreement, made this ——— day of ———, A. D. 18—, between *A. B.*, of the town of ———, in the county of ———, and state of Wisconsin, of the one part, and *C. D.*, of the same town, of the other part,—witnesseth, that whereas the said *A. B.* has heretofore erected a fence on the division line between his lands and the lands of said *C. D.*, in said town, which said fence commences at [describe the line of fence;] and whereas, after the erection of said fence, the said *C. D.* enclosed a field on the east side of said division

**SECTION 8.** When in any controversy that may arise between occupants of adjoining lands as to their respective rights in any partition fence, it shall appear to the fence viewers that either of the occupants had, before any complaint made to them, voluntarily erected the whole fence, or more than his just share of the same, or otherwise become proprietor thereof, the other occupant shall pay for so much as may be assigned to him to repair or maintain, the value of which shall be ascertained and recorded in the manner provided in this chapter.

When either party erects more than his share, the other party to pay for same.

**SECTION 9.** All partition fences shall be kept in good repair throughout the year, unless the occupants of the lands on both sides shall otherwise mutually agree.

Partition fences to be kept in good repair.

**SECTION 10.** When lands of different persons which are required to be fenced, are bounded upon or divided by any river, brook, pond, or creek, which of itself, in the judgment of the fence viewers, is not a sufficient fence, and it is in their opinion impracticable, without unreasonable expense, for the partition fence to be made in such waters, in the place where the true boundary line is; if in such case the occupant of the land on one side shall refuse or neglect to join with the occupant of the land on the other side, in making a partition fence on the one side or the other; or if such persons shall disagree respecting the same, then two or more fence viewers of the town in which such lands lie, on application to them made, shall forthwith proceed to view such river, brook, pond, or creek.

How partition fences made when lands divided by river, pond, &c.

**SECTION 11.** If such fence viewers shall determine such river, brook, pond, or creek in the preceding section mentioned, not to answer the purpose of a sufficient fence, and that it is impracticable, without unreasonable expense, to build a fence on the true boundary line, they shall, after giving notice to the parties, determine how or on which side thereof the fence shall be set up and maintained, or whether partly on one side and partly on the other side, as to them shall appear just, and shall reduce such determination to writing and sign the same; and if either party shall refuse or neglect to make or maintain his part of the fence according to the determination of the fence viewers, the same may be made and maintained by the other party, as before provided in this chapter;

How fence viewers to proceed and decide in such cases.

If either party neglect to build fence, the other may.

line, so that sixty rods of said fence, commencing at, &c., [describe the portion of fence,] has become and now is a partition fence between the respective fields of the said A. B. and C. D.; and whereas the said C. D. has paid to said A. B. ——— dollars, being in full for one-half of the value of said sixty rods of fence,—it is therefore agreed, in consideration of the premises, between the said parties, that the thirty rods of fence on the north part of said sixty rods, being the north half thereof, shall be well and sufficiently maintained and kept in repair by the said A. B., and the remainder of said sixty rods shall be kept in like repair by the said C. D.

In witness whereof, the said parties have hereunto set their hands and seals, the day and year first above written.

In presence of  
[two witnesses.] }

A. B., [L. S.]  
C. D., [L. S.]

\* Where a dispute arises as to the proportion of a fence to be maintained by each party, it may be settled by the fence viewers, even where there has been an agreement on the subject.—[*Burger v. Koriwright, 4 Johns., 414.*

The decision of the fence viewers as to the proportion of fence of each party, is not necessary where there is no dispute between them.—[*Willoughby v. Carlton, 9 Johns., 138.*

and the delinquent party shall be subject to the same charges and costs, to be recovered in like manner.

Division and assignment of partition fence between persons occupying lands in common.

SECTION 12. When any lands belonging to different persons in severalty shall have been occupied in common, without a partition fence between them, and one of the occupants shall be desirous to occupy his part in severalty, and the occupant shall refuse or neglect, on demand, to divide with him the line where the fence ought to be built, or to build a sufficient fence on his part of the line, when divided, the party desiring it may have the same divided and assigned by two or more fence viewers of the same town, in the manner provided in this chapter.

If party neglect to make his part of fence, the other party may make same and recover double the expense.

SECTION 13. Upon the division and assignment, as provided in the preceding section, the fence viewers may, in writing under their hands, assign a reasonable time for making the fence, having regard to the season of the year; and if either party shall not make his part of the fence within the time so assigned, the other party may, after having completed his own part of the fence, make the part of the other, and recover therefor double the ascertained expense thereof, together with the fees of the fence viewers, in the manner provided in this chapter.

When one party wishes to open his enclosure, the other party may purchase fence.

SECTION 14. When one party shall cease to improve his land, or shall open his enclosure, he shall not take away any part of the partition fence belonging to him and adjoining the next enclosure, if the owner or occupant of the next enclosure will, within two months after the same shall be ascertained, pay therefor such sum as two or more fence viewers shall, in writing under their hands, determine to be the value of such partition fence belonging to such party.

The owner of unenclosed land enclosing same, to pay for half of partition fence, &c.

SECTION 15. When any unenclosed land shall be afterward enclosed, the owner or occupant thereof shall pay for one-half of each partition fence, standing upon the line between his land and the enclosure of any other owner or occupant, and the value thereof shall be ascertained by two or more fence viewers of the town, in writing under their hands, in case the parties do not agree; and if such owner or occupant shall neglect or refuse, for sixty days after the value has been so ascertained, and demand made, to pay for one-half of such partition fence, the proprietor of such fence may maintain an action in the form aforesaid, for such value, and the costs of ascertaining the same.

On boundary line between towns, fence viewer from each town to act.

SECTION 16. In all cases where the line upon which a partition fence is to be made, or to be divided, is the boundary line between towns, or partly in one town and partly in another, a fence viewer shall be taken from each town.

Partition fences running into water.

SECTION 17. Where a partition fence running into the water is necessary to be made, the same shall be done in equal shares, unless otherwise agreed by the parties; and in case either party shall refuse or neglect to make or maintain the share belonging to him, similar proceedings shall be had as in case of other fences, and with the like effect.

Owners, their heirs and assigns, to support division fences.

SECTION 18. In all cases where the line upon which a partition fence is to be built between unimproved lands, has been divided by the fence viewers, or by agreement in writing between

the owners of such lands, recorded in the office of the clerk of the town, or of one of the towns, where such lands lie, the several owners thereof, and their heirs and assigns forever, shall erect and support said fences, agreeably to such division.

SECTION 19. If any person shall determine not to improve any part of his land adjoining any partition fence that may have been divided according to the provisions of this chapter, and shall give six months' notice of such determination, to all the adjoining occupants of lands, he shall not be required to keep up or support any part of such fence, during the time his lands shall lie open and unimproved; and he may thereafter remove his portion thereof, if the owner or occupant of the adjoining enclosure will not pay therefor, as provided in the fourteenth section of this chapter.<sup>1</sup>

Owner may remove partition fence on six months' notice.

FENCE VIEWERS.

SECTION 20. The overseers of highways, in the several towns in this state, shall be fence viewers in their respective towns.

Overseers of highways to be fence viewers.

SECTION 21. Any fence viewer who shall, when requested, unreasonably neglect to view any fence, or to perform any duty required of him in this chapter, shall forfeit the sum of five dollars, and shall also be liable to the party injured for all damages consequent upon such neglect.

Penalty for neglect of fence viewer to act.

<sup>1</sup> Form of notice and determination not to improve lands adjoining partition fence.

To Mr. A. B. of the town of Richmond and county of Walworth.

Take notice that I have determined not to improve any part of my lands adjoining the partition fence between lands owned and occupied by us in said town of Richmond, being the same fence divided according to law [or by agreement, &c.] by William Patterson and H. A. Stone, two of the fence viewers of said town, in writing, bearing date the — day of —, 18 —; and that I shall make application to said fence viewers above named, [name the fence viewers to whom application is to be made,] at — on the — day of —, 18 —, at — o'clock, — M., that they may determine the value of that portion of such partition fence belonging to me; and that I shall, at the expiration of two months from the date of the determination of said fence viewers, remove my said fence, unless you shall within that time pay to me the value thereof as determined by said viewers.

Dated at Richmond, this — day of —, 18 —.

J. M. EVANS.

Form of determination of fence viewers, of value of partition fence which is desired to be removed.

Walworth county. }  
Town of Richmond. } ss.

We, the undersigned, two of the fence viewers of said town of Richmond, upon the application of J. M. Evans, made in pursuance of the annexed notice, have examined the partition fence in said notice mentioned, and do determine the value of that portion of such partition fence belonging to said J. M. Evans to be — dollars.

Given under our hands, this — day of —, 18 —.

WM. PATTERSON, }  
H. A. STONE, } fence viewers.

NOTE.—Let the notice and determination of fence viewers be attached together.



Fees of fence viewers, and how recovered.

**SECTION 22.** Each fence viewer shall be paid by the person employing him, at the rate of one dollar a day for the time he shall be so employed ; and if such person shall neglect to pay the same within thirty days after the service shall have been performed, each fence viewer having performed any such service may recover in an action double the amount of such fees.

#### POUNDS AND IMPOUNDING CATTLE.

Towns may provide and maintain pounds.

**SECTION 23.** Each town may, at its own expense, and in such places therein as the electors shall direct, provide and maintain one or more sufficient pounds, in which swine, sheep, horses, asses, mules, goats, and neat cattle may be restrained and kept from going at large, contrary to law, or to any by-law of such town.

Penalty for injuring pound.

**SECTION 24.** If any person shall willfully injure any pound, maintained by any town, he shall be deemed guilty of a misdemeanor ; and on conviction thereof, shall be punished by a fine not exceeding fifty dollars, or by imprisonment in the county jail not exceeding ninety days, at the discretion of the court.

### CHAPTER XVIII.

#### OF THE ASSESSMENT AND COLLECTION OF TAXES.

R. S. 1858.  
CHAP. 18.  
p. 200.

##### PROPERTY TO BE TAXED.

What property liable to taxation.

**SECTION 1.** All property, real and personal, within this state, not expressly exempted therefrom, shall be subject to taxation in the manner provided by law.

Definition of real property, &c.

**SECTION 2.** Real property shall, for the purpose of taxation, be construed to include the land itself, and all buildings, fixtures, and other improvements thereon, and all mines, minerals, quarries, and fossils, in and under the same ; and the terms "land" and "real estate," when used in this chapter, shall be construed as having the same meaning as the term "real property."

Definition of personal property, &c.

**SECTION 3.** The terms "personal property" and "personal estate," as used in this chapter, shall have the same meaning, and shall, for the purpose of taxation, be construed to include all goods and chattels, moneys and effects ; all boats and vessels, whether at home or abroad, and all capital invested therein ; all debts due, or to become due, from solvent debtors, whether on account, contract, note, mortgage, or otherwise ; all public stocks, and stocks or shares in all incorporated companies ; and such portion of the capital of incorporated companies, liable to taxation on their capital, as shall not be invested in real estate.

What property to be exempt from taxation.

**SECTION 4.** The following property shall be exempt from taxation.

S. L. 1852,  
ch. 298.

1. All property, real and personal, of the United States and of this state.

2. All public or corporate property of the several counties, cities, villages, towns, and school districts in this state, used or intended for corporate purposes, except lands bid off for counties on tax sales.

3. All personal property exempt by law from execution, not exceeding in value two hundred dollars.

4. The personal property of all literary, benevolent, charitable, and scientific institutions within this state, and such real estate belonging to such institutions as shall be actually occupied by them for the purposes for which they have been or shall be organized.

5. All houses of public worship, and the lots on which they are situate, and the pews or slips and furniture therein, every parsonage, and all burial grounds, tombs, and rights of burial; but any part of any building, being a house of public worship, which shall be kept or used as a store or shop, or for any other purpose except for public worship or for schools, shall be taxed upon the cash valuation thereof, the same as personal property, to the owner or occupant, or to both; and the taxes thereon shall be collected in the same manner as taxes on personal estate.

6. All public libraries, and the real and personal property belonging to or connected with the same.

7. The property of all Indians who are not citizens, except lands held by them by purchase.

8. The personal property of persons who, by reason of infirmity, age, and poverty, may, in the opinion of the assessors, be unable to contribute toward the public charges.

9. All property, real and personal, held by and belonging to any agricultural society in this state, which now is or may hereafter be lawfully organized in pursuance of law.

SECTION 5. Lands contracted to be sold by the state, and not conveyed, shall be assessed to the person holding the contract or certificate of purchase for the same, or to the occupant.

*Lands contracted to be sold by state, to be taxed as personal property.*

#### WHERE AND TO WHOM PROPERTY SHALL BE ASSESSED.

SECTION 6. All lands shall be assessed in the town or ward in which the same shall lie; and every person shall be assessed in the town or ward where he resides when the assessment is made, for all lands then owned by him within such town or ward; but land owned by one person and occupied by another, may be assessed in the name of the owner or occupant.

*Where lands to be assessed.*

*When occupied may be assessed to owner or occupant.*

SECTION 7. Unoccupied lands, if the owner is unknown, may be assessed as such, without inserting the name of any person.

*Unoccupied lands how assessed.*

SECTION 8. The real estate of incorporated companies liable to taxation, shall be assessed in the town or ward in which the same shall lie, in the same manner as the real estate of individuals; and so much of any bridge or turnpike, owned by any such company, together with all buildings and fixtures belonging thereto, as shall be situate within any town, city, or village, shall be liable to taxation in such town, city, or village, as real estate, and may be returned and sold as real property; and such portion

*Real estate of corporations where to be assessed.*

*Roads, bridges, &c., of corporations, where to be taxed and how sold.*

Capital so taxed not liable as personal property.

Undivided real estate of deceased persons to be assessed to heirs or devisees without name, &c.

Where persons to be taxed for personal estate.

How and where assessed to trustees, &c.

Goods, &c., kept for sale, and stock and capital employed in arts and manufactures, to be taxed where same may be.

Partners may be jointly or severally taxed.

Where stock and personal estate of corporations to be taxed.

Personal property of company or any member may be sold to pay tax.

\* When owner of stock not to be taxed for same.

Personal property mortgaged, to whom to be assessed.

of the capital of any such company as shall be thus taxed, shall not be liable to be taxed as personal property.

SECTION 9. The undivided real estate of any deceased person may be assessed to the heirs or devisees of such person, unless occupied by some other person to whom it may be assessed, without designating them by name, until they shall have given notice to the assessor of the division of the estate, and the names of the several heirs and devisees; and each heir and devisee shall be liable for the whole of such tax, and shall have a right to recover of the other heirs and devisees their respective proportions thereof, when paid by him.

SECTION 10. Every person, except as provided in the succeeding section, shall be assessed in the town or ward where he resides when the assessment is made, for all taxable personal estate owned by him, including all such personal estate in his possession, or under his control, as trustee, guardian, executor, or administrator; and where there are two or more persons jointly in possession or having the control of any such property in trust, the same may be assessed to either or all such persons; but it shall be assessed in the town or ward where the same shall be, if either of such persons reside in such town or ward.

SECTION 11. All goods, wares, and merchandise kept for sale in this state, all stock employed in any of the mechanic arts, and all capital and machinery employed in any branch of manufactures or other business within this state, owned by a corporation out of this state, or by any person or persons whether residing in or out of the state, shall be taxable in the town or ward where the same may be, either, to the owner thereof, or to the person who shall have charge of or be in possession of the same.

SECTION 12. Partners in mercantile or other business may be jointly taxed in their partnership name, or severally taxed on their individual shares, for all the personal property employed in such business; and in case they are jointly taxed, each partner shall be liable for the whole tax.

SECTION 13. All the stock and personal estate of every incorporated company liable to taxation, unless otherwise provided, shall be assessed in the name of the company, in the town or ward where the principal office or place for transacting the financial concerns of the company shall be, or if such company have no such office, or place for transacting financial business, then in the town or ward where its operations shall be carried on; and in collecting any tax on such stock or personal estate, the personal property of any such company may be seized and sold, the same as that of individuals; and in case no such property belonging to the company can be found sufficient to satisfy the tax and legal charges, then the personal property of any member thereof may be taken and sold to pay the same.

SECTION 14. The owner or holder of stock in any incorporated company which is taxed on its capital, shall not be taxed as an individual for such stock.

SECTION 15. When personal property is mortgaged or pledged, it shall, for the purpose of taxation, be deemed the property of the person who has the possession.

## DUTIES OF ASSESSORS.

**SECTION 16.** Between the first day of June and the first day of July in each year, the assessor in each town or ward shall ascertain by diligent inquiry the names of all the taxable persons in his town or ward, and also all their taxable personal property and all taxable real estate therein on the first day of June of such year, and shall make out an assessment roll of all such taxable property and appraise the same as hereinafter specified, and said assessor shall proceed to the proper offices to ascertain the amount of such taxable personal property held by persons residing in his town or ward as has been recorded in said offices. When assessor to make assessment roll and appraisal. s. L. 1852, ch. 462.

**SECTION 17.** He shall set down in the assessment roll, in separate columns and according to the best information he can obtain:— What he shall insert in assessment roll.

1. The names of all the taxable persons of the town or ward.
2. A description of each tract or parcel of land to be taxed, specifying under appropriate heads the township, range, and section in which the land lies; or if divided into lots and blocks, then the number of the lot and block.
3. The number of acres and parts of an acre, as near as the same can be ascertained, unless the land is divided into lots and blocks.
4. The full cash value of each parcel of land taxed.
5. The full cash value of all the taxable personal property owned by or to be taxed to such persons, as provided by law.
6. The total valuation of all property taxed, real and personal.

**SECTION 18.** When lots situate in any city or village, or in any town, a plot of which shall have been recorded, are assessed, the city, village, or town in which the same are situate shall be specified in the assessment roll. City, village, or town in which lots are situate, to be specified.

**SECTION 19.** When a person is assessed as trustee, guardian, executor, or administrator, a designation of his representative character shall be added to his name, and such assessment shall be entered on a separate line from his individual assessment; and he shall be assessed for the real estate held by him in such representative character at the full value thereof, and for all the personal property so held by him in such representative character. When person assessed as trustee, &c., how assessment to be entered.

**SECTION 20.** If the land assessed be less or other than a subdivision according to the United States survey, unless the same is divided into lots or blocks so that it can thereby be definitely described, it shall be described by giving the boundaries thereof, or in such other manner as to make the description certain. When boundaries to be given.

**SECTION 21.** It shall be sufficient to describe lands in all proceedings relative to assessing, advertising, or selling the same for taxes, by initial letters, abbreviations, and figures, to designate the township, range, section, or parts of a section, and also the number of the lots and blocks. Lands may be described by letters, abbreviations, and figures.

**SECTION 22.** Unoccupied lands liable to taxation, when the name of the owner is unknown, shall be described and the value thereof set down in the assessment roll, in a part thereof separate from the other assessments, in the same manner that lands How unoccupied land of unknown persons to be described and set down.

of residents are required to be described, and the value thereof designated.

Assessment roll  
how made out.

SECTION 23. The assessment roll shall be made out in tabular form, in separate columns with appropriate heads, after the manner specified below, with such additional columns as may be deemed necessary, varying the same as circumstances may require, but as nearly as convenient in the following form:—

#### ASSESSMENT ROLL

for the town of \_\_\_\_\_, in the county of \_\_\_\_\_, and state of Wisconsin,  
for the year 18—; containing all the taxable property, real and personal, in said town.

Names of persons taxed.	Description of lands.	Section.	Township.	Range, [E. or W.]	No. of acres.	Valuation of real estate	Valuation of per- sonal property.	Total valuation of all property.	Amount of tax.	Remarks.
A. B.,	W. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ ,	34	3	19	80	\$ cts.	\$ cts.	\$ cts.	\$ cts.	
do.	do. omitted in 18—,	34	3	19	80	560.00	300.00	860.00	860.00	
B. C.,										
C. D. guardian (or executor) of L. M.							6000.00	6000.00		
E. F. guardian of							400.00	400.00		
J. H.,	W. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ .	24	3	19	20	120.00	300.00	420.00		
G. H.,	Land bounded N. by lot No. 2; E. by lands owned by A. B.; S. by the W. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ of section 6; and W. by the township line,	6	3	19	12 $\frac{1}{2}$	87.50		87.50		
Unknown,	S. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ ,	17	3	19	320	960.00		960.00		
do.	E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ ,	18	3	19	80	200.00		200.00		
do.	do. omitted in 18—,	18	3	19	80	200.00		200.00		

#### LOTS

in the village of \_\_\_\_\_, in said town, described according to the map thereof  
on record in the office of the register of deeds in said county.

Names of persons taxed.	Numbers of lots.	Block.	Valuation of each lot.	Valuation of all lots.	Valuation of per- sonal property.	Total valuation.	Amount of tax.	Remarks.
A. B.,	2, 3, and 4,	10	\$ cts.	\$ cts.	\$ cts.	\$ cts.	\$ cts.	
A. B.,	6,	10	50.00	150.00	50.00	200.00		
C. D.,	10,	20	100.00	100.00		100.00		
S. R.,	Out lot (or large lot)		300.00	300.00	800.00	1100.00		
	3 five acres,			170.00		170.00		
S. R.,	do. omitted in 18—,			170.00		170.00		

Assessors must  
enter on rolls all  
state, school, &c.  
lands in their  
towns.

S. L. 1868, ch. 92.

SECTION 24. The assessors of each town in this state shall, in making out their assessment rolls for each year, enter upon said rolls, in a separate column, under a distinct heading, a list of all state, school, and university lands in their towns respectively, which shall be held on contract; which lands shall be assessed in the same manner as other lands are now assessed, without regard

to any balance of purchase money remaining unpaid on the same :

*provided*, that the secretary of state shall, as soon as may be, make out and transmit to the clerk of the board of supervisors of each county of this state, an abstract containing a correct and full statement and description of state, school, and university lands held on contract, and upon the receipt thereof, the said clerk shall immediately make out and transmit to the clerk of each town in the county, a list, from said abstract, of the lands as [so] held on contract in such town.

Secretary of state to transmit to clerk of county board an abstract of school lands, &c.

SECTION 25. The town clerk of each such town shall include such list, under the same heading, in the roll delivered to the town treasurer, who shall collect the taxes on any such land in the same manner as he is required by law to collect other taxes, and return a separate list of such land on which the taxes shall not have been paid to the county treasurer, at the time fixed for him to return other lands.

Town clerk to include such list in roll, and to collect tax.

S. L. 1863, ch. 92.

SECTION 26. The county treasurer shall not sell any such delinquent lands for such taxes ; but if the same should not be paid on or before the first day of December next following the time when said return is made, with interest thereon at the rate of twelve per cent. from the first day of January preceding said return, the said county treasurer shall immediately forward certified lists of such lands on which the taxes remain unpaid, to the state treasurer, who shall place the amount of such delinquent tax and interest to the credit of the proper county, and charge the same against the proper description of land ; and the same provisions of law that apply to the payment of interest on any such land, and the forfeiture thereof for the non-payment of such interest, shall apply to the collection of such delinquent taxes ; and the school commissioners shall in no case execute the patents for any such land until all taxes are paid.

County treasurer not to sell, but to return lands, &c., to state treasurer.

Id.

State treasurer to charge tax against land, and proceed as in case of non-payment of interest.

SECTION 27. If any assessor, when making his assessment, shall discover that any land in his town was omitted in the assessment roll of either or both of the two previous years, and was then liable to taxation, he shall, in addition to the assessment of such land for that year, assess the same separately for such year or years that it shall have been so omitted, at the just value thereof, when so assessed, noting distinctly the year when such omission occurred ; and such assessment shall have the same force and effect as it would have had if made in the year the same was omitted ; and the taxes to the amount that should have been paid in the year such omission occurred shall be levied and collected thereon, in like manner and together with the taxes of the year in which such assessment is made ; and all lands shall be subject to taxes omitted to be assessed, into whosoever hands they may come.

Assessor to assess lands omitted in two previous years.

Taxes to be levied and collected thereon, &c.

SECTION 28. Every assessor may require any person giving in the amount or list of his taxable property, to make oath before him that the same is full and correct ; and any person refusing to make such oath shall not be permitted afterward to reduce the valuation made by such assessor of his property for that year.<sup>1</sup>

Assessors may require oath of persons giving in list, &c.

1 Wis., §45.

(1) This section does not require a person to give in, or make out for the assessor, on his

Valuation of property, real and personal, may be fixed by affidavit.

1 Wis., 845.

Agent or attorney may make the affidavit.

Trustee, &c., may fix valuation of real and personal property held in trust.

All property to be assessed at its cash value.

Assessment roll, when to be completed, &c.

1 Wis., 845.

**SECTION 29.** If any person, whose real or personal estate is liable to taxation, shall, at any time before the assessor shall have completed his assessment, make affidavit that the value of his personal estate liable to taxation, after deducting his property invested in the stock of any incorporated company liable to taxation on its capital, does not exceed a certain sum, to be specified in the affidavit; or if he shall prove by the affidavit of himself, and that of a disinterested freeholder of the same town or ward, not of kin to him, that the value of his real estate does not exceed a certain sum, to be specified in the affidavit,—it shall be the duty of the assessor to value such real or personal estate at the sum specified in such affidavit; and the agent or attorney of any person whose property is assessed may in all cases make affidavit as to its value, and such affidavit shall have the same force and effect as if made by his principal.

**SECTION 30.** If any trustee, guardian, executor, or administrator shall specify by affidavit the value of the personal property possessed by him or under his control by virtue of his trust, after deducting the stock held by him in any incorporated company liable to taxation in that capacity, the assessor shall value the same at the sum specified in such affidavit; and such person may reduce the valuation of any real estate so held in trust by him, upon his own affidavit, specifying the value thereof, filed with the assessor.

**SECTION 31.** All the real and personal estate liable to taxation, the value of which shall not have been specified by affidavit as aforesaid, shall be estimated by the assessor at its true cash value.

**SECTION 32.** The assessors shall complete the assessment rolls of their respective towns and wards, on or before the first Monday of July in every year; on which day, at nine o'clock in the forenoon, each assessor shall appear at the place where the last town or ward election was held in his town or ward, for the purpose of reviewing his assessment, and may continue such review from day to day, so long as shall be necessary for that purpose; and on the request of any person conceiving himself aggrieved, if such person shall not previously have made affidavit concerning the value of the property assessed to him pursuant to this chapter, the assessor shall, on affidavit made as provided in this

demand or request, a list or amount of his property, liable to taxation. But it authorizes the assessor to require the person who voluntarily furnishes such list to make oath to the fullness and correctness thereof.

Any person who refuses to make oath to the fullness and correctness of such list voluntarily furnished by him is not permitted to reduce his assessment by virtue of the provisions of the 29th section.

If a person makes his affidavit, and in other respects complies with the requirements of the 29th and 32d sections of chapter 18, he is entitled to have his assessment reduced to the amount stated in the affidavit.

The assessors cannot question or dispute the truth of the affidavit. If it is in conformity with the statute it is conclusive upon their action. Section 29 prescribes the matters which the affidavit shall contain, and the person complying with the provisions of the statute is entitled to the benefit of it.

When the assessors, or any other officer, refuses to perform an act which it is clearly their duty to do, a mandamus is the proper remedy to compel such performance.—[*State ex. rel. Ward v. Assessors of Delevan*, 1 Wis. R., 345.]

chapter, reduce the assessment of such person to the sum specified in such affidavit.

SECTION 33. If the person objecting to the assessment can show, by other proof than his own affidavit, to the satisfaction of the assessor, that such assessment is erroneous, the assessor shall review and alter the same without requiring the affidavit of such person.

Person objecting may offer other proof than his own affidavit.

SECTION 34. If from sickness or other cause, any assessor can not attend at the time and place as prescribed above, he may review his assessment roll at such place, on any other day prior to the twentieth day of July next thereafter, upon first giving at least six days' previous notice thereof, by posting up notices in three or more public places in his town or ward, specifying the time and place for such review; and such assessment roll shall be open for inspection and alteration until the same shall be corrected and certified to by the assessor.

When assessor can not attend on day fixed, when and how he may afterward proceed.

Roll open to inspection and alteration until certified.

SECTION 35. All oaths and affidavits to be administered in the assessment or valuation of property for taxation, may be taken before the assessor, or any person authorized to administer oaths, and the assessor shall cause all such affidavits to be filed in the office of the town clerk.

Oaths may be administered by assessor, &c.

SECTION 36. When the assessor shall have reviewed and completed his assessment roll, he shall attach a certificate thereto, signed by him, which shall be substantially in the following form :

Certificate to be attached to assessment roll.

"I do certify that I have set down in the above assessment roll, all the real estate situated in the town [or ward, as the case may be] of \_\_\_\_\_ liable to be taxed, according to my best information, and that with the exception of those cases in which the value of the said real estate has been fixed by affidavit made pursuant to laws, I have estimated the same at what I believe to be the true cash value thereof; that the said assessment roll contains a true statement of the aggregate valuation of the taxable personal estate of each and every person named in said roll, as nearly as I could ascertain the same, and excluding such stocks as are otherwise taxable; and that, with the exception of those cases in which the value of such personal estate has been sworn to by the owner, possessor, or agent, I have estimated the same at its true cash value, according to my best information and belief."

SECTION 37. It shall be the duty of the assessor, or assessors, authorized by law to assess taxable property for state, county, and town purposes, in each town, or in each ward, or city, or incorporated village in this state, to furnish to the clerk of the board of supervisors of the county in which such town, city, or incorporated village may be, on or before the first day of August in each year, the original assessment roll complete, on real and personal property in said town, ward, city, or incorporated village, as made by said assessor or assessors for the year in which such assessment is made. If such assessor shall fail or refuse to furnish such assessment roll as above provided, he shall be deemed guilty of a misdemeanor, and shall be finable in a sum not less than ten nor more than fifty dollars.

Duty of assessor to furnish complete assessment roll; penalty for failure.

S. L. 1854, ch. 78.

SECTION 38. It shall be the duty of the clerk of the board of supervisors of each county in this state, to keep and file in his office such assessment rolls as may be returned to him by the assessor

Clerk of county board to keep rolls and forward to secretary of



state aggregates  
of value, &c.

S. L. 1854, ch. 78.

or assessors of the towns, cities, or incorporated villages in his county; he shall add up the amount of the property assessed, both real and personal, the number of acres of land, and the value of village or city lots in his county; he shall also add up the total of personal property in said county, and shall keep the said rolls for the use of the board of supervisors of his county, for their action at their annual session, as provided by existing laws; and he shall also forward to the secretary of state, on or before the fifteenth day of August in each year, a statement showing the aggregate number of acres of land assessed in his county, and the value thereof, the aggregate value of personal property in said county, the average value per acre of the land and city or village lots so assessed,—which said statement shall be signed by said clerk and sealed with the official seal of the board of supervisors of his county, and shall be filed in the office of the secretary of state for the use of the state board of equalization.

Penalty for neglect to forward  
statement and  
how enforced.

S. L. 1855, ch. 93.

SECTION 39. If the clerk of the board of supervisors of any county shall neglect or refuse to forward to the secretary of state the statement required by the next preceding section, and within the time as required by said preceding section, such clerk shall be deemed guilty of a misdemeanor, and shall be liable to a fine of fifty dollars and costs of collection for each and every offense; and it shall be the duty of the secretary of state, in every case where such statement shall not be received at his office from any clerk, as aforesaid, on or before the first day of September in each year, to notify the district attorney of the county in which such clerk resides, of the delinquency of said clerk; and it shall be the duty of said attorney, on receiving such notice from the secretary of state, to demand of such delinquent clerk the penalty herein provided; and in case of refusal to pay such penalty, said attorney shall proceed to collect the same by legal coercion, with costs and fees as in the other criminal cases. In case of prosecution of any clerk as herein provided, the certificate of the secretary of state, under seal of his office, shall be *prima facie* evidence of delinquency on the part of the clerk and consequent liability for the penalty provided in this chapter.

District attorney  
to pay over all  
fines collected by  
him.

Id.

If town neglect to  
make out assess-  
ment roll, the  
board of supervi-  
sors may.

Id.

SECTION 40. Every district attorney shall forthwith pay over to the treasurer of his county any fine received or collected by him under the provisions of this chapter, as provided by law in respect to fines and forfeitures.

SECTION 41. If in any year the assessment roll of any town or ward shall not be made out and returned to the clerk of the board of supervisors of the county, as required by law, the said board shall, for such year, cause a tax list or assessment roll to be made out from the last assessment roll of such town or ward, making such additions thereto and alterations therein, as they may deem just and equitable, to make the assessments on all taxable property in such town or ward equal; which tax list or roll so made out shall be acted upon and enforced, and all taxes specified therein shall be collected, in like manner as if such roll had been made out and returned as hereinbefore provided.

Assessors to be

SECTION 42. The assessors, in the execution of their duties,

shall use the forms and pursue the instructions which may from time to time be transmitted to them by the secretary of state. governed by instructions of secretary of state. S. L. 1855, ch. 98.

**EQUALIZATION OF THE ASSESSMENTS, AND MANNER OF ASSESSING TAXES.**

**SECTION 43.** The governor, lieutenant governor, secretary of state, treasurer, attorney general, state superintendent, and bank comptroller of this state, shall be, and are hereby constituted, a state board of equalization, for the purpose of equalizing the assessments of state tax upon the taxable property, both real and personal, in the several counties in this state, as returned to the said state board by the clerks of the several boards of county supervisors, as hereinafter provided. State board of equalization, how constituted. S. L. 1854, ch. 78.

**SECTION 44.** It shall be the duty of the state board of equalization, five of whom shall constitute a quorum, to meet in the office of the secretary of state, on the third Monday of September in each year; the governor shall be *ex officio* president, the secretary of state secretary, of said board; and they shall then examine the aggregate valuation of the taxable property of the several counties of this state, as returned to the secretary of state, and for the purpose of ascertaining the amount of state tax to be applied in each county, for the current year, shall increase or diminish the same in any county, so much *per centum* as may in their opinion be necessary to produce a just relation between the valuation of the taxable property in the several counties, and the amount so added or deducted in each case shall be entered in a book to be kept for that purpose, and they shall carry out in such book the amount of state tax to be charged against each county according to the said valuation so increased or diminished, and in no instance shall the aggregate valuation of all the counties be reduced below the aggregate valuation returned. State board to meet in each year and equalize so as to produce just relation between counties.

**SECTION 45.** If in any year the assessment roll of any town or ward shall not be made out and returned, as provided in this chapter, there is hereby devolved upon the clerk of the board of supervisors the same power and authority to cause to be made out a tax list and assessment from the last assessment roll, as is given to the county board of supervisors by section forty-one of this chapter; and if any clerk of the board of supervisors shall fail to forward the statement for his county, as provided in the thirty-eighth section of this chapter, the state board of equalization shall have power, and they are hereby directed, to make out a statement of the aggregates of real and personal property of said county, from the assessment for the next preceding year, or if no such assessment be accessible, then from the best sources of information within their reach; and they shall proceed to assess to such county its proportion of state tax, the same as if a statement from the clerk of supervisors of such county had been duly returned. Clerk of county board to cause tax list to be made, &c., when assessors fail. If clerk of board fails, state board of equalization to make statement.

**SECTION 46.** It shall be the duty of the secretary of state to charge to the counties the amount of state tax assessed against them, respectively, which shall be paid into the state treasury as provided by law, and the secretary of state shall notify the clerk Secretary of state to charge the amount of state tax assessed and notify clerk of county board.

S. L. 1854, ch. 73. of the board of supervisors of each county in this state, on or before the first Monday of October of the current year, and each succeeding year, the amount of such tax charged against such county.

Supervisors required to levy state tax.

Id.

Board of supervisors to ascertain the relative valuation of real estate.

SECTION 47. The supervisors of the several counties in this state are hereby required to levy the amount of state tax charged to their respective counties, upon the taxable property therein, as is provided in this chapter.

SECTION 48. The board of supervisors of each county shall, at their annual meeting in each year, examine the assessment rolls of the several towns and wards in their county, and ascertain whether the valuation of real estate in each town or ward bears a just relation or proportion to the valuation in all the towns and wards of the county.

May increase or diminish the valuation in any town, but not to reduce the aggregate valuation.

SECTION 49. On such examination, they may increase or diminish the aggregate valuation of real estate, in any town or ward, so much *per centum* as may in their opinion be necessary to produce a just relation between all the valuations of real estate in the county, and the amount so added or deducted in each case shall be entered upon their records; but in no instance shall they reduce the aggregate valuation of all the towns and wards below the aggregate valuations thereof as made by the assessors.

May alter description of lands, and expunge such as can not be correctly described.

SECTION 50. They shall also make such alterations in the description of any lands upon such rolls, as may be necessary to render such description conformable to the requirements of this chapter; and if such description can not be so altered, they shall expunge the description of such lands, and the assessments thereon, from the assessment roll.

When rolls to be delivered to supervisor of each town and by him to town clerk.

SECTION 51. After the assessment rolls shall have been thus equalized and corrected, the board of supervisors shall cause the corrected assessment roll of each town or ward, or a copy of the same, to be delivered to the supervisor thereof, who shall deliver the same to the clerk of the proper town or city, to be filed and kept by him in his office.

Board to enter valuations of taxable property on their records, and clerk to transmit statement to secretary of state.

SECTION 52. The board of supervisors in each county shall also cause to be entered on their records, the aggregate valuations of the taxable real and personal property in the several towns and wards of their county, as corrected by them; from which record the clerk of the board shall, within ten days after their annual meeting, make and transmit to the secretary of state, by mail, or otherwise, a certified statement showing the aggregate valuation of the taxable real and personal estate in the county, and the aggregate valuation of such property in each town and ward therein, as corrected by the board.

Amount to be raised for schools.

SECTION 53. The board of county supervisors, at their annual meeting in each year, shall estimate and determine the amount of moneys to be raised in each town and ward in their county, for the support of common schools therein, for such year, which tax shall be levied and collected in each year, and shall not be less than one-half the amount of school moneys apportioned to such town and ward by the state superintendent in his last apportionment of school moneys; nor shall the amount so raised

for school purposes exceed three mills on the dollar, in any one year, upon the valuations of taxable property in such county; every such determination for the raising of school moneys by the said board, shall be recorded by their clerk, and the sum so determined to be raised shall be assessed and collected, for the use of common schools, in each town and ward in such county, in addition to any sum any such town or ward may have voted to raise for the support of common schools therein.

SECTION 54. Whenever there shall have been no distribution of school moneys to any town or ward, in any year, the county board of supervisors shall, at their annual meeting in that year, direct to be raised, on the valuation of the taxable property in such town or ward, the same percentage or proportionable amount of taxes for the support of common schools therein, as shall be required to be raised for that purpose in the other towns in such county.

SECTION 55. The county board of supervisors shall, also, at their annual session in each year, ascertain and determine the amount of money to be raised by tax for the county purposes, and apportion such amount, together with the amount of state tax required to be raised in their county, among the several towns and wards therein, in proportion to the valuation of taxable property therein for the year, as equalized by the board; and every such determination and apportionment shall be entered at large in their records.

SECTION 56. The clerk of the board of supervisors shall, immediately after such apportionments, make out two certificates of the several amounts apportioned to be assessed upon the taxable property of each town and ward, for state, county, and school purposes, one of which he shall deliver, or cause to be delivered, to the county treasurer and the other to the clerk of the proper town, or city, as the case may be; and the county treasurer shall charge the amount of state and county taxes specified in each certificate, to the proper town or city.

SECTION 57. The town clerk of every town shall, on or before the first day of December in each year, deliver to the town treasurer of his town a certified statement, showing separately the amount of state, county, and school tax apportioned to each town, and also the amount of town and other local taxes to be collected therein, specifying the amount of each particular kind of town or other local tax; and such town treasurer shall, within six days after receiving such certified statement, execute to the county treasurer, and his successors in office, a bond, in double the amount of state and county taxes so apportioned to his town, with good and sufficient sureties, to be approved by the chairman of the board of supervisors of his town, or the county treasurer, conditioned that he will duly and faithfully perform the duties of his office, and that he will faithfully and truly account for and pay over, according to law, all such state and county taxes which shall come into his hands, and shall deliver such bond to the county treasurer, to be filed and kept in his office.

SECTION 58. The county treasurer shall file and safely keep

Determination to be recorded, and such amount to be raised as additional.

How amount of school tax ascertained when town shall not have drawn school moneys preceding year.

Board to determine and apportion amount of county tax, &c.

Clerk of supervisors to make certificates of taxes to be raised, and to whom to deliver same.

County treasurer to charge tax due from each town to same.

When town clerk to deliver statement of taxes to town treasurer.

When treasurer to file bond.

County treasurer

to file bond and deliver receipt for same to town treasurer, and he to town clerk.

Town clerk on receipt of roll and certificate to carry out taxes, including five per cent.

When to deliver roll to town treasurer.

Not to be delivered until bond executed and receipt filed.

Warrant to be annexed to assessment roll.

1 Wis., 457.

such bond in his office, and on the receipt thereof he shall give to the town treasurer a receipt, stating that he has received the bond required by the preceding section, which receipt the said town treasurer shall forthwith deliver to the clerk of his town.

SECTION 59. It shall be the duty of every town clerk, immediately upon the reception of the corrected assessment roll, and a certificate of the amount of state, county, and school tax apportioned to his town as aforesaid, to calculate and carry out the total amount of such taxes, together with all town and other local taxes, unless otherwise provided, adding thereto five per cent. for expense of collection, in an additional column prepared for that purpose in the assessment roll, setting opposite to the several sums set down as the valuation of real and personal estate the respective sums assessed as taxes thereon, in dollars and cents, rejecting the fractions of a cent.

SECTION 60. The said town clerk shall immediately make out a fair copy of such assessment roll, when thus completed, and deliver the same to the town treasurer of his town, on or before the second Monday of December in each year, but in no case shall the assessment roll be delivered to such treasurer, until he shall have executed the bond and delivered the receipt required in the fifty-seventh and fifty-eighth sections of this chapter.

SECTION 61. To each assessment roll so delivered, a warrant under the hand of the town clerk shall be annexed, substantially in the following form, to wit:—<sup>1</sup>

The state of Wisconsin to \_\_\_\_\_, town treasurer of the town of \_\_\_\_\_, in the county of \_\_\_\_\_. You are hereby commanded to collect from each of the persons and corporations, named in the annexed assessment roll, and of the owners of the real estate described therein, the taxes set down in such roll opposite to their respective names, and to the several parcels of land therein described; and in case any person or corporation, upon whom any such sum or tax is imposed, shall refuse or neglect to pay the same, you are to levy and collect the same by distress and sale of the goods and chattels of the person or corporation so taxed; and out of the moneys so to be collected, after deducting your fees, you are first to pay to the treasurer of said county, on or before the last Monday of January next, the sum of \_\_\_\_\_, for state taxes; you are to retain and pay out, as town treasurer, according to law, the sum of \_\_\_\_\_; and the balance of said moneys you are required to pay to said treasurer for county purposes, on or before the day above specified; by which day you are further required to make return to said treasurer of this warrant, with said roll annexed, together with your doings thereon, as provided by law.

Given under my hand, this \_\_\_\_\_ day of \_\_\_\_\_, in the year 18—.

\_\_\_\_\_, clerk of said town.

Town clerk to make memorandum, &c., and charge treasurer with town and local taxes.

SECTION 62. As soon as the town clerk shall have delivered the assessment roll and warrant to the town treasurer, as aforesaid, he shall make a memorandum or entry thereof, and charge to such treasurer the amount of the town and other local taxes, if any, in a book to be kept by him for that purpose.

How warrant for

SECTION 63. The warrant for the collection of state and

(1) The protection which the law affords to ministerial officers, acting in obedience to process fair and regular on its face, issued from a court of competent jurisdiction, is extended to such officers in the collection of taxes.—[*Sprague v. Birchard*, 1 Wis., 457.]

county taxes in any city, shall, unless otherwise provided, be made out and signed by the clerk of such city, and annexed by him to the assessment rolls of the several wards therein; and the same shall be delivered to the treasurer thereof for collection, who shall proceed in the collection of the taxes therein specified in like manner as he is required by the charter of such city to collect city taxes; and he shall make return thereof under oath, with the assessment rolls of the several wards annexed, to the county treasurer, in the like time and in the same manner, as nearly as practicable, as town treasurers are required to make their returns in like cases; but the affidavit to be attached to his return shall conform to the duties required to be performed by him in the collection of taxes; and taxes for city or other local purposes may be collected together with the state and county taxes, when so ordered by the common council of such city, and if so collected, they shall be set down in one or more separate columns; but in all cases the tax for the support of common schools in such city, imposed by the county board of supervisors shall be levied and collected at the same time with the state and county taxes, and retained by the treasurer of such city, and paid over by him as required by law; and the warrant issued to such treasurer shall be so modified as to conform to the provisions of this chapter.

collection of state and county taxes in cities to be made out, &c.

Taxes for city purposes may be collected with state and county taxes.

Taxes for support of schools imposed by supervisors to be collected with state tax.

SECTION 64. Whenever the people of any township which has been or shall be hereafter set off, shall neglect or refuse to organize by the election and qualification of the officers required by law to be chosen by the several towns within this state, by reason whereof the property of said township shall fail to be assessed and returned in the manner provided by law, the county board of supervisors shall issue their warrant to the assessor and to the treasurer of the town next adjoining, requiring them to assess and collect respectively the quota of taxes due from such township to the county and state, until an election shall be held therein; and thereupon such assessor and such treasurer shall severally discharge all the duties in regard to the assessment and collection of said taxes within said township, that would have devolved upon them had they been duly elected treasurer and assessor respectively for said township, and for any malfeasance in respect hereof, said treasurer shall be liable upon his official bond, or said board of supervisors may, if they think necessary, require him to execute a new bond to the county treasurer, in such sum and such surety as they shall direct.

When town neglects to organize, county board to issue warrant to assessors of adjoining towns. S. L., 1850, ch. 175.

SECTION 65. The board of supervisors of any town, and the common council of any city, shall have power, and they are hereby authorized, to extend the time for the collection of taxes in such town or city, for such period of time not exceeding thirty days, as the said board of supervisors or the said common council may deem necessary.

Town board, &c., may extend time for collection of taxes. S. L. 1856, ch. 15.

SECTION 66. The extension of time for the collection of taxes in any town or city shall not, in any manner, postpone the time for the payment to the county treasurer of the state tax included in any town or city tax roll.

Extension not to extend time for payment of state taxes.

Id.

Collector to have same power to collect, &c.

S. L., 1856, ch. 15.

SECTION 67. The collector of taxes shall have the same power and authority to proceed in the collection of taxes contained in such town or city tax roll, after as before such extension of time for the collection of said taxes, and the return of any such collector of taxes to the county treasurer within the time limited and specified by said board of town supervisors, or to the common council in their order extending the time for the collection of taxes, shall be as valid and effectual as if made pursuant to the direction of the original warrant.

Form of order.

Id.

SECTION 68. Such order, extending the time for the collection of taxes, may be in the following or equivalent form, to be indorsed upon the warrant annexed to the tax roll of such town or city:—

We hereby renew this warrant for \_\_\_\_\_ days.

Dated this \_\_\_\_\_ day of \_\_\_\_\_

Supervisors of the town of \_\_\_\_\_

or mayor and clerk of common council of the city of \_\_\_\_\_.

Town treasurer to post notices that taxes are in his hands for collection.

Id.

SECTION 69. The town treasurer of each town, on the receipt of the assessment roll for the current year, with the tax list annexed, shall forthwith post up notices, in three or more public places in such town, that the taxes assessed and levied in such town are placed in his hands for collection, and that the taxes charged therein are subject to payment at his office, at any time prior to the twenty-fifth day of December in such year.

On taxes paid prior, &c., deduction of part of fees to be made.

Id.

SECTION 70. On all taxes so paid or tendered at the office of such treasurer, prior to said twenty-fifth day of December, the said treasurer shall remit to the person so paying or tendering, three-fifths of the amount included in said list, as his fees for collecting such tax so paid.

Treasurer to proceed to demand and collect taxes.

Id.

SECTION 71. The said treasurer shall, after the said twenty-fifth day of December, proceed to collect the taxes charged in such list and remaining unpaid, and for that purpose shall call at least once on the person taxed, or at the place of his usual residence, if in the town, and shall demand payment of the taxes charged to him on such list.

Town and county orders, &c., payable for taxes to a certain amount.

4 Wis. 224.

SECTION 72. Town orders shall be payable for taxes in the town where issued, and shall be allowed the town treasurer on settlement of town taxes, and county orders and jurors' certificates shall be payable for taxes in the county where issued, and shall be allowed to such treasurer on his settlement of county taxes with the county treasurer; but no town treasurer shall receive town orders in payment for taxes to a larger amount than the town taxes included in his assessment roll, exclusive of all taxes for school purposes, nor county orders and jurors' certificates to a greater amount than the county tax included therein; and he shall, in all cases, pay to the county treasurer the full amount of state tax in gold and silver coin.<sup>1</sup>

State tax to be paid in gold and silver.

(1) County orders and jurors' certificates are receivable in payment of county taxes in the towns where the same are collectible; but after lands have been returned delinquent to the county treasurer, the holder cannot set them off against the unpaid town or county taxes so returned unpaid.—[*Keep v. Frazier*, 4 Wis. R., 224.]

**SECTION 73.** No town or county treasurer, or other town or county officer, shall either directly or indirectly purchase, or receive in exchange, or in payment for taxes or otherwise, in any manner whatever, any county or town order, or any demand against his county or town, for a claim allowed by the proper board, during his term of office, for a less amount than that expressed on the face of such order or demand; and any such person, so offending, shall, on conviction thereof, be fined in a sum not less than twenty-five, nor more than two hundred and fifty dollars.

No town or county officer to purchase, &c., town or county orders at a discount.

**SECTION 74.** The town treasurer shall, on the payment to him of any tax, give a receipt for the same, therein describing the lands, or specifying the amount of personal property, upon which the same is paid, and shall note on his tax roll the payment thereof; and if any such treasurer shall willfully return to the county treasurer, as unpaid, any tax which has been paid to him, except a double assessment, he shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by imprisonment not exceeding six months, or by fine not exceeding two hundred and fifty dollars, or both, in the discretion of the court.

Town treasurer, on payment of tax, to give a receipt, &c.

Penalty for returning tax if paid.

**SECTION 75.** In case any person shall refuse or neglect to pay the tax imposed on him, the town treasurer shall levy the same by distress and sale of the goods and chattels of such persons, wherever the same may be found within his town.<sup>1</sup>

If tax unpaid, treasurer to levy same by distress and sale.

**SECTION 76.** The town treasurer shall give public notice of the time and place of sale, and of the property to be sold, at least six days previous to the sale, by advertisement, to be posted up in three public places in the town where such sale shall be made; and the sale shall be at public auction, in the day time, and the property sold shall be present; but at any time previous to the sale, the owner or claimant of such property may release the same by the payment of the taxes, interest, and charges for which the same is liable to be sold.

Notice of time and place of sale, &c., to be given, and how made.

Owner may release property on payment of taxes, &c.

**SECTION 77.** Whenever the purchase money on such sale shall not be paid at such time as the town treasurer shall require, he may, in his discretion, again expose the property for sale, or sue in his name of office such purchaser for the purchase money, and recover the same with costs and ten per cent. damages.

If purchase money not paid, treasurer may resell or sue for same.

**SECTION 78.** If property so distrained cannot be sold for want of bidders, the treasurer shall return a statement of the fact, and the tax, if unsatisfied, shall be collected in the same manner as if no levy had been made.

If property not sold, how tax to be returned.

**SECTION 79.** In case any person upon whom any tax may be assessed, shall have removed out of any town or ward where the

If person liable to pay tax shall have removed,

Taxes are not properly judgments or contracts, but are positive acts of government which bind those who are subject to them, without their individual consent.—[*Id. Pierce v. Barton*, 8 Met. R., 520.]

(1) Real and personal property subject to taxation within the limits of this state may be sold to liquidate the assessment upon it. It is immaterial whether the owner is or not a resident: it is equally subject to sale. Replevin will not lie to arrest the sale or prevent the collection of the tax imposed.

The assessment becomes a lien upon the property, and cannot be arrested unless the proceedings are proved to be illegal.—[*Palmer v. Corwith*, 3 Chand., 297.]



treasurer may  
collect same  
within the  
county.

assessment was made against him, after such assessment, and before such tax ought by law to be collected, it shall be lawful for the treasurer of such town to levy and collect such tax of the goods and chattels of the person so assessed, wherever the same may be found within the county where such assessment was made.

Surplus of sale  
to be returned to  
owner.

SECTION 80. If the property distrained shall be sold for more than the amount of the tax and costs, the surplus shall be returned to the owner of such property.

If treasurer can  
not collect tax,  
how he may pro-  
ceed.

S. L. 1856, ch. 16.

Justice may issue  
summons to de-  
linquent to ap-  
pear forthwith,  
and proceedings  
thereon.

SECTION 81. In case the town treasurer is unable to collect any tax assessed upon any personal property and payable by any person named in his tax list, he shall make and file with some justice of the peace of his county an affidavit, stating that there is a tax upon personal property in his town assessed against such person; that he, the said treasurer, has demanded payment thereof, and is unable to collect the same; such justice of the peace shall thereupon issue a summons directed to such person, commanding him to appear forthwith before him, the said justice, to answer under oath and show cause why he does not pay said taxes; such summons may be served by said town treasurer, or any constable in said county, by reading the same to such person or in his hearing; upon its appearing by the affidavit of the officer or person serving such summons that the same was duly served on the person to whom the same was directed, and that he has failed or neglected to appear before said justice of the peace for twenty-four hours after the service of the summons, the said justice of the peace shall issue a warrant directed to the sheriff or any constable of the county, commanding them to forthwith arrest and bring such person before him, the said justice.<sup>1</sup>

<sup>1</sup> *Form of affidavit of town treasurer, who is unable to collect tax on personal property.*

State of Wisconsin. }  
Walworth county. } ss.

*William S. Valentine*, town treasurer of the town of *Geneva*, in said county, being duly sworn, doth depose and say, that there is a tax upon personal property in his town, assessed against *A. B.*; that he, said treasurer, has demanded payment thereof, and is unable to collect the same.

WM. L. VALENTINE.

Subscribed and sworn to before me, this — day of —, A. D. 18—.

J. T. ABELL, justice of the peace.

*Form of justice's summons to delinquent tax-payer.*

State of Wisconsin. }  
Walworth county. } ss.

To *A. B.*, of the town of *Geneva*, in said county.

Affidavit having been made and filed with the undersigned, justice of the peace of said county, by *William L. Valentine*, town treasurer of the town of *Geneva*, in said county, stating that there is a tax upon personal property in his town, assessed against you, the said *A. B.*; that he, said treasurer, has demanded payment thereof, and is unable to collect the same; therefore, in the name of the state of Wisconsin, you are commanded to appear forthwith before the undersigned, justice of the peace, at his office in said town of *Geneva*, to answer under oath, and show cause why you do not pay said taxes.

Given under my hand at *Geneva*, this — day of —, A. D. 18—.

J. T. ABELL, justice of the peace.

**SECTION 82.** The justice before whom such person shall appear or is brought, shall cause him to be examined on oath, and any witnesses that may be produced by him or by the treasurer, as to the fact whether the person so arrested had any personal property liable to taxation, at the time the assessment was made, and as to the ability of the person so arrested to pay such tax; and if he shall refuse to answer all questions put to him touching his ability to pay such tax, or if it shall appear to the satisfaction of the justice, from such examination, that he had personal property subject to taxation at the time the assessment was made, and that he has money or property, real or personal, of any description, which is not exempt from sale for taxes, sufficient to pay said tax, or such portion thereof as such justice shall determine the person so arrested ought to pay, the justice shall make an order requiring him to pay such tax forthwith; and if he shall neglect or refuse to pay such tax, as required by such order, no property belonging to him shall be exempt from seizure and sale for the payment of such tax; but if it shall appear from such examination, that he has not sufficient money or property to pay such tax, or that he had no personal property subject to taxation at the time the assessment was made, he shall be forthwith discharged.

Justice to cause person to be examined on oath, and may hear witnesses, &c.  
R. A., 1859.

**SECTION 83.** The justice before whom such examination is *Examination to*

*Form of affidavit of service of the foregoing summons.*

State of Wisconsin. }  
Walworth county. } ss.

*William Jewett*, a constable of said county, being duly sworn, says, that he did, upon this — day of —, 18—, serve the within summons upon the within named *A. B.*, by reading the same to him.

WM. JEWETT.

Subscribed and sworn to before me, this — day of —, A. D. 18—.

B. T. PAINE, justice of the peace.

NOTE.—This affidavit should be indorsed upon the summons, as in case of an ordinary return.

*Form of warrant for arrest of delinquent tax-payer.*

State of Wisconsin. }  
Walworth county. } ss.

To the sheriff, or any constable, of said county, greeting:—

Whereas, affidavit has been filed with the undersigned, justice of the peace of said county, by *William L. Valentine*, town collector of the town of *Geneva*, in said county, stating that there existed a tax upon personal property in his town, assessed against *A. B.*; that he, said treasurer, had demanded payment thereof, and was unable to collect the same; whereupon, the undersigned justice issued a summons, directed to said *A. B.*, commanding him to appear, forthwith, before him, said justice, to answer under oath, and show cause why he did not pay said taxes; and it appearing that said summons has been duly served according to law, and said *A. B.* having failed to appear before said justice of the peace, for twenty-four hours after the service of said summons,—in the name of the state of Wisconsin, you are hereby commanded to forthwith arrest, and bring said *A. B.* before the undersigned, justice of the peace, at his office in *Geneva*, to be further dealt with according to law; and have you then and there this writ.

Given under my hand, this — day of —, 18—.

J. T. ABELL, justice of the peace.

be reduced to writing and filed with clerk of circuit court.

R. A., 1858.

held, shall reduce the examination of the person arrested, and all witnesses produced and examined, to writing, and cause the same to be subscribed by the persons examined, and the same shall be filed with the clerk of the circuit court, and in case a new trial is had in the circuit court, the examinations so returned shall be read on such trial, and either party may produce other proof on such trial.

Appeal may be taken to circuit court.

Id.

SECTION 84. Every person feeling himself aggrieved by the decision or order of the justice as hereinbefore provided, may appeal to the circuit court of said county, by executing an undertaking to the county, with one or more sureties, to be approved by said justice, conditioned to abide by and perform such order as the said court may make in relation to the payment of such tax, and upon the execution of such undertaking, the justice shall forthwith cause him to be discharged, and shall return said undertaking with the examination.

How tried in circuit court.

Id.

SECTION 85. The matter shall be tried in the circuit court as other issues, and if the court or jury shall find on such trial that the defendant had sufficient money or property of any description not exempt from sale for taxes, to pay said tax at the time of his examination before said justice, judgment shall be rendered against him and the sureties in said undertaking for the amount of such tax, and for all costs, fees, and disbursements before the justice and in the circuit court, and an execution shall thereupon issue against the property of the defendants in said judgment; and no property belonging to the defendant shall be exempt from seizure and sale under said execution.

Duty of district attorney to try case, &c.

Id.

SECTION 86. It shall be the duty of the district attorney to try for the county all cases in the circuit court, in all cases provided for in sections eighty-four and eighty-five of this chapter.

Examination may be removed to nearest justice.

Id.

SECTION 87. Any person arrested and taken before a justice of the peace for examination, may cause such examination to be removed before the justice of the peace of the same county nearest to the justice before whom he has been so taken by the treasurer, by making and delivering to the treasurer an affidavit stating that he believes such justice, from prejudice or other cause, will not decide impartially in the matter; and upon every such affidavit the treasurer shall take the person so arrested before such nearest justice, who shall proceed therein in the manner hereinbefore provided; but such affidavit shall be made before the examination is commenced, and the person arrested shall not be entitled to remove the same more than once.

Treasurer to receive tax on any part of lot or undivided share.

Remainder of lot, &c., to be returned.

SECTION 88. The town treasurer shall receive the tax on any part of any lot or parcel of land, or on any undivided share or interest therein, which the person paying the tax will clearly define; and if the tax on the remainder of such lot or parcel of land shall remain unpaid, such treasurer shall return such remainder and the tax due thereon to the county treasurer; and if the part on which the tax is so paid shall be an undivided share, the person paying the same shall state to the town treasurer the name of the owner of such share, that it may be excepted in case of sale for the tax on the remainder; for which purpose the town

treasurer shall enter the name of such owner and a specification of such share in his account of arrears of taxes; and the balance of taxes on any such land shall be a lien on the residue only of such lot or parcel of land.

Treasurer to note name of owner and description of share on which tax paid, &c.

SECTION 89. When any town treasurer discovers that any land has been assessed more than once for the same year, he shall collect only the tax justly due thereon, and shall make return of the balance as a double assessment, and he shall be credited therefor by the county treasurer, as provided in the ninety-fifth section of this chapter.

Double assessments, how collected and returned, &c.

SECTION 90. Each town treasurer shall receive two *per centum* on all sums collected by him as such treasurer prior to the twenty-fifth day of December in each year, and on all sums collected after the twenty-fifth day of December, five per cent., to be retained out of the money he may so collect or receive; and in case of a distress and sale by him of goods and chattels for the payment of any tax, he shall be entitled to collect and receive from the same, in addition, such fees as constables are authorized to receive for levying upon and selling goods under execution.

Fees of town treasurer for collections.  
S. L. 1856, ch. 85.

SECTION 91. The town treasurer shall retain in his hands the amount specified in his warrant to be paid into the town treasury, together with his fees, and shall, on or before the day specified in his warrant for paying the money therein directed to be paid to the county treasurer, pay to him the sum so directed to be paid, in the manner required by law; and in every case the town treasurer shall pay over the full amount of state tax, though it may occasion a deficiency in the town taxes.

How town treasurer to dispose of moneys collected by him.

State tax to be paid first.

SECTION 92. In case there shall be a deficiency of cash funds in the town treasury to pay all the charges thereon in any year, then the town treasurer shall set apart, in the order specified below, a sufficient amount of such funds to pay in full each of such charges, so far as such funds will extend, and he shall pay the same in the order and for the objects herein specified, to wit:—

If deficiency of funds in town treasury, how same to be set apart and applied.

1. The amount of moneys raised for common school purposes, and returned taxes collected for any school district.

2. The amount raised for the support of the poor.

3. All moneys raised for highways and bridges, and returned taxes collected for any road district.

4. The amount of moneys raised for all other town purposes, shall be applied to the payment of all other lawful claims upon the town treasury, in the order in which such claims may be presented, when there are funds in the treasury.

General claims to be paid in the order they are presented.

SECTION 93. If any taxes mentioned in the tax list annexed to his warrant, either on real estate or personal estate, shall remain unpaid, and he shall be unable to collect the same, he shall make out a statement of the taxes so remaining unpaid, adding thereto the five per cent allowed by law for collecting fees, distinguishing by setting down separately, between such as are on real and such as are on personal estate, with a full and perfect description of such real estate from his tax roll, and the name of the person taxed, if therein specified, and submit the same to the county treasurer; he shall also include in such statement a description of any land

How return of unpaid taxes to be made.

Land doubly assessed to be re-

turned, and county treasurer to compare return with tax roll.

Form of return of town treasurer.

doubly assessed, and the amount of tax thereon, and also the specification and entry required by the eighty-eighth section of this chapter; the county treasurer shall carefully compare such statement when submitted with the tax roll, to ascertain that it is correct.

SECTION 94. The return of the town treasurer to the county treasurer of delinquent taxes, may be made in tabular form, and varied as facts may require, but when so made shall be as nearly as convenient after the following form:—

“Return ——— of ——— treasurer of the town of ——— in the county of ——— and state of Wisconsin, containing a description of the lands and the taxes thereon, and the valuation of personal property and the taxes thereon, (if any,) assessed in said town, in the year ———, which taxes remain due and unpaid for the years herein specified, to wit:—

Names of persons taxed.	Description of lands and statement of personal property.	Section.	Township.	Range.	Number of acres.	Amount of tax.	Years for which taxes are due.	Remarks.
A. B.,	N. $\frac{1}{2}$ of N.E. $\frac{1}{4}$ ,	34	3	19	80	\$ cts.		
C. D.,	undivided $\frac{1}{2}$ of E. $\frac{1}{4}$ of N.E. $\frac{1}{4}$ ,	34	3	19	53	5.60	1848	
do.,	do. omitted in 18	34	3	19	53	2.74	1848	
Unknown,	E. $\frac{1}{2}$ of S.E. $\frac{1}{4}$ ,	18	3	19	80	2.25	1847	
						2.00	1848	
A. B.,	Personal property, valuation \$300,					3.00		

“The taxes on the following shares of parcels of land above returned have been paid by the following named owners:—

E. F.,	Undivided $\frac{1}{2}$ of the E. $\frac{1}{4}$ of N.E. $\frac{1}{4}$ ,	34	3	19	26 $\frac{1}{2}$	\$ cts.	1848	Remarks.
						1.37		

The following land is returned as doubly assessed for the year 1848.

R. S.,	S. $\frac{1}{2}$ ,	17	3	19	320	\$ cts.	1848	Remarks.
Unknown,	W. $\frac{1}{2}$ of N.W. $\frac{1}{4}$ ,	4			80	9.60	1848	
						2.00		

O. H., town treasurer.”

Affidavit to be made and annexed to return.

SECTION 95. The town treasurer shall then make an affidavit, to be annexed to such statement, before the county treasurer, or before any officer authorized to administer oaths, that the facts set forth in said statement are correct, that the sums therein returned as unpaid taxes have not been paid, and that he has not upon diligent inquiry been able to discover any goods or chattels belonging to the persons charged with such unpaid taxes whereon he could levy the same; which statement and affidavit shall be filed with the county treasurer; and he shall thereupon be credited by the county treasurer with the amount of taxes so returned as unpaid and doubly assessed, and shall be allowed one dollar for making his return, and six cents per mile, travel fee, one way, in transmitting the same, to be allowed and paid to him by the county treasurer on settlement.

Town treasurer to be credited, &c., and his fee for making return.

Upon settlement, town treasurer's bond to be indorsed satisfied,

SECTION 96. Upon settlement as aforesaid of the amount of taxes to be collected by the town treasurer and paid to the county treasurer, such county treasurer shall indorse the bond of such town treasurer filed in his office as satisfied and paid; and the

indorsement so made shall operate as a full discharge of such town treasurer and his sureties from the obligations of such bond, unless it shall afterward appear that the return of such town treasurer was false, in which case such bond shall continue in force, and such collector and his sureties shall be liable to be prosecuted thereon for all deficiencies, and for all damages occasioned by such false return.

SECTION 97. The five per cent. on the delinquent tax list returned by the town treasurer to the county treasurer as collector's fees, shall be collected by the county treasurer in the same manner as other delinquent county taxes are collected and in like manner appropriated.

Five per cent. to be collected and appropriated same as delinquent taxes.  
S. L. 1854, ch. 8.

SECTION 98. Whenever any town treasurer shall pay over any money collected for taxes, or any other money, to the county treasurer, it shall be the duty of the county treasurer to deliver to such town treasurer duplicate receipts for the amount of money so received from said town treasurer, specifying in such receipts, the sum paid, on what account the same is paid, and the date of payment; and it shall be the duty of the town treasurer to present such receipts to the clerk of the board of supervisors of the county, who shall countersign one of said receipts, and return the same to said town treasurer, and shall retain the other and safely keep the same in his office; and no receipt of the county treasurer given to a town treasurer, for moneys paid by such town treasurer, shall be any evidence of such payment, in favor of such town treasurer, unless the same shall be first countersigned by the clerk of the board of supervisors.

County treasurer to give duplicate receipts for moneys received from town treasurers.  
R. A., 1858.

Clerk of board to countersign receipts, and retain one in his office.

SECTION 99. It shall be the duty of the county treasurer, at the time such town treasurer makes his return to him, of the delinquent taxes on the tax list of his town, to make and deliver to each town treasurer a certificate signed by him, certifying the amount of delinquent taxes so returned by such town treasurer, specifying the amount delinquent on real estate, and the amount on personal property; and it shall be the duty of the town treasurer to whom such certificate is given, forthwith to deliver the same to the clerk of the board of supervisors of said county, who shall file and keep the same safely in his office; and no county treasurer shall indorse the bond of such town treasurer filed in his office, as satisfied and paid, until such certificate shall be delivered to the clerk of the board of supervisors, or filed in his office as above specified.

County treasurer to give to town treasurer certificate of amount of delinquent taxes, &c.

SECTION 100. It shall be the duty of the county treasurer, annually, within thirty days after the several town treasurers of his county shall have made their returns of the delinquent taxes in the several towns in said county, as provided by law, to make a schedule of all the taxes on personal property in said county so returned as unpaid by the said town treasurers, and which shall remain unpaid at the time of making such schedule; such schedule shall also contain all taxes on personal property in said county, returned by said town treasurers as unpaid for the two years next preceding those last returned, and which shall have

Schedule of unpaid taxes on personal property to be made.  
Id.

remained uncollected at the date thereof, and may be in the following form, to wit:—

Schedule of taxes assessed on personal property for the years 18—, 18— and 18—, and which were returned as provided by law, by the several town treasurers of the county of — as delinquent and unpaid, and which remain unpaid on this — day of —, A. D. 18—.

Names of persons taxed.	Amount of tax due.	Years for which taxes are due.
A. B.	\$10.50	1859.
C. D.	7.50	do.
E. F.	12.50	1858.
G. H.	10.50	1857.

County treasurer to annex warrant to schedule.

The county treasurer shall within the time aforesaid annex to such schedule, a warrant under his hand, directed to the sheriff of his county, commanding him to collect from each of the persons and corporations named in said schedule, the amount of the unpaid taxes set down in such schedule opposite to their respective names, together with his fees for collecting the same, of the goods and chattels, lands and tenements, of said persons and corporations respectively, and to pay the same to the county treasurer, and make return of such warrant within sixty days after the date thereof, and the county treasurer may renew such warrant from time to time, either before or after the return of the same, for sixty days at any one time, and not longer than one year after the date of such warrant.

Sheriff to proceed to collect taxes specified in schedule.

R. A., 1858.

SECTION 101. The sheriff, to whom the warrant specified in the preceding section shall be delivered, shall proceed in the same manner, and shall have the same power to enforce the collection of the unpaid taxes specified in the schedule thereto annexed, against the several persons and corporations named in such schedule, as he would have upon execution issued out of a court of record of this state against the goods and chattels, lands and tenements, of such persons or corporations: *provided*, that no law of this state exempting any goods and chattels, lands or tenements, from forced sale under execution, shall apply to a levy and sale under such warrant.

When town board may appoint town treasurer.

SECTION 102. In case the town treasurer of any town shall refuse to serve, or shall die, resign, or remove out of the town, before he shall have entered upon or completed the duties of his office, or shall be disabled from completing the same from any cause, the town board shall forthwith appoint a town treasurer for the remainder of the term, who shall give like security, and be subject to like duties and penalties, and have the same powers and compensation, as the town treasurer in whose place he was appointed; and the town clerk shall forthwith give notice of such appointment to the county treasurer; but such appointment shall not exonerate the former town treasurer or his sureties from any liability incurred by him or them.

Town clerk to give notice to county treasurer.

If warrant issued to former town clerk prior to an appointment under the last section, the

SECTION 103. If a warrant shall have been issued by the town clerk prior to an appointment under the last section, the

original warrant and the tax list, if the same can be obtained, shall be delivered to the town treasurer so appointed, and shall be considered as giving him the same power as if originally issued to himself; but if such warrant and tax list can not be obtained, a new one shall be made out by the town clerk, which shall be directed to the town treasurer so appointed, upon which he shall collect only the balance of taxes remaining unpaid, and shall be responsible only for the same. Upon any such appointment, the town board, if they shall think it necessary, may, by writing under their hands, indorsed upon the assessment roll, extend the time limited for the collection of the taxes for a period not exceeding thirty days.

rer. to be delivered to the treasurer appointed, &c.

When board may extend time for collecting taxes.

SECTION 104. In case the town treasurer shall neglect or refuse to file his bond with the county treasurer, in the manner and within the time prescribed by law, and the town board shall fail to appoint a town treasurer, or he shall fail to give such bond and deliver a receipt for the same to the town clerk by the second Monday of December of the year in which he is appointed, the town clerk shall deliver to the sheriff of the county the original warrant and tax list, if the same can be obtained, and if not, then the same shall be made out anew, and signed and delivered by him to such sheriff, to be executed by himself or his deputy, who shall execute to the county treasurer a like bond as is required of the town treasurer, and shall make like collections and returns, and shall be entitled to the same compensation, and be responsible to the same extent, as town treasurers appointed by town boards, on all taxes so handed over to him for collection, and for the purpose of collecting the same shall be vested with all the powers conferred upon the town treasurer.

When town clerk shall deliver warrant and tax list to sheriff.

Sheriff to give bond and collect taxes, &c.

SECTION 105. If any town treasurer shall refuse or neglect to pay to the several officers in his town, or their order, or to the county treasurer, the sums in his hands required by law to be paid to them respectively, or either of them, or their order, or if he shall neglect or refuse to account for the moneys required to be collected and paid by him to them, or either of them, as provided by law, the county treasurer shall issue a warrant under his hand, directed to the sheriff of the county, commanding him to levy such sum as shall remain unpaid, or unaccounted for, together with his fees for collecting the same, and interest and damages as specified in the one hundred and seventieth section of this chapter, of the goods and chattels, lands and tenements, of such town treasurer, and his sureties, and to pay the same to the county treasurer, and return such warrant within sixty days from the date hereof; but no such warrant shall be issued by the county treasurer for the collection of moneys payable to town officers or their order, without proof by affidavit of the refusal or neglect of such town treasurer to pay the same, or account therefor, as provided by law; and nothing in this section contained shall be construed as prohibiting a prosecution upon any town treasurer's bond, in case of a breach thereof.

Proceedings against town treasurer for neglect to pay moneys, or to account.

Proof to be first made in certain cases.

Bond may be prosecuted.

SECTION 106. The county treasurer shall forthwith deliver Warrant to be



delivered to sheriff, and his duties relative thereto.

such warrant to the sheriff of the county, who shall immediately cause the same to be executed, and shall make return thereof to the county treasurer within the time therein specified, and pay to him the amount required by such warrant, and such sheriff shall be entitled to collect and receive the same fees as are allowed by law to sheriffs on execution.

Moneys when collected how to be paid.

SECTION 107. So much of the moneys so collected, as ought to have been paid by the town treasurer to any town officer or other person, shall be paid by the county treasurer to such officer or person; and if the whole amount of moneys due from the town treasurer shall not be collected on such warrant, the county treasurer shall first retain the amount of state tax which should have been collected and paid over to him by such delinquent town treasurer; he shall next pay over the amount of town and local taxes to the officer or person aforesaid, entitled to receive the same, and the balance, if any, he shall retain for county purposes.

Proceedings against sheriff, if he neglect to return warrant, pay money collected, &c.

SECTION 108. If any sheriff shall neglect to return any such warrant, or to pay the money collected thereon, within the time limited for the return of such warrant, or shall make a false return thereto, the county treasurer shall forthwith proceed to collect of him the whole sum directed to be levied by such warrant, in the same manner as such sheriff might be proceeded against for neglecting to return an execution in a civil action.

If treasurer fail to collect money, sheriff's bond to be prosecuted, &c.

SECTION 109. If the county treasurer shall in such case fail to collect such moneys, he shall forthwith cause a prosecution upon the official bond of such sheriff, to be had against him and his sureties, for the sum due on such warrant, which sum when collected shall be applied and paid by the county treasurer, in the same manner as specified in the one hundred and seventh section of this chapter.

How taxes on land or part thereof may be discharged.

SECTION 110. Any person may discharge the taxes on any parcel of land returned as aforesaid, or on any part thereof, or undivided share therein, by paying the same with interest at twelve per cent. from the first day of January previous, and all lawful charges thereon, to the county treasurer, at any time before the first Monday of April next after they are returned, and shall be entitled to duplicate receipts therefor, as hereinafter provided, on the payment of taxes after said first Monday of April.

County treasurer to make list of returned lands, with taxes and charges thereon.

SECTION 111. It shall be the duty of the county treasurer, immediately after the first Monday of April in each year, to make out a complete list of all the lands returned to him as provided by law, upon which the taxes for the year preceding shall remain unpaid, specifying in such list, each tract or lot, the name of the person to whom assessed, if to any, and the amount of taxes, charges as returned by the town treasurer, and interest thereon, calculated at the rate of twelve per cent. from the first day of January preceding to that day, due on each tract or parcel thereof; such list shall be made in a book to be provided by the county treasurer for that purpose; after completing such list, the treasurer shall annex thereto, a certificate to be signed by him, which certificate shall be substantially in the following form, to wit:—

"I, A. B., treasurer of the county of ———, do certify the foregoing is a correct list of all the lots and parcels of land returned to me by the several town treasurers of said county, as provided by law, on which the taxes assessed and due for the year A. D. 18—, remain unpaid, and that the sum set opposite each tract or parcel in said list is the amount of tax due and unpaid on such tract for the year aforesaid, together with the interest and costs chargeable thereon to this date.

In testimony whereof, I have hereunto affixed my official signature, this ——— day of ———, A. D. 18—.

A. B., treasurer of the county of ———."

Such list shall be completed and certified within ten days after the first Monday of April in each year.

SECTION 112. Immediately after the completion of the list of lands mentioned in the preceding section, and within ten days after the first Monday of April in each year, the treasurer shall cause to be made a correct and perfect transcript of such list, in a book to be kept in the office of the clerk of the board of supervisors for that purpose, to which transcript he shall also annex his certificate as mentioned in the preceding section.

To cause transcript of list to be made in book kept by clerk of the board.

SECTION 113. Any person may discharge the taxes due on any parcel of land contained in such list or lists, or on any part thereof, or undivided share therein, by paying the amount of the taxes, interest, and charges thereon, as specified in said list, together with interest thereon at the rate of twenty-five per cent. *per annum*, from the first Monday of April in the year in which such list shall be made, and all subsequent charges thereon authorized by the provisions of this chapter, at any time within three years from the day last mentioned; but whenever any taxes on any land contained in said lists shall be paid within six months after the date of such list, interest at the rate aforesaid shall be paid for six months.

How taxes contained in lists may be discharged.

SECTION 114. Any person wishing to pay the taxes on any parcel of land contained in said lists, or on any part or undivided share thereof, shall, within the three years specified in the preceding section, pay to the treasurer the amount of such taxes, interest, and charges as specified in said lists, or such portion thereof as the part or interest redeemed shall amount to, together with interest thereon, at the rate of twenty-five per cent. *per annum*, from the first Monday of April in the year in which said list was made, to the date of such payment, and all subsequent charges thereon; on receiving such payment, the treasurer shall deliver to the person making the same, duplicate receipts for such payment, signed by him, specifying therein the parcel or parcels of land on which such taxes were paid, the amount paid on each parcel, the time of payment, and the name of the person paying the same, and the treasurer shall also enter on the list kept by him, opposite the parcel or parcels of land on which such taxes shall be paid, the name of the person paying such tax, the sum paid therefor, and the time when paid; the person to whom such duplicate receipts are given, shall present them to the clerk of the board of supervisors of the county, and thereupon said clerk shall countersign one of said receipts, and return it to the person entitled thereto, and retain the other, and

Treasurer shall give duplicate receipts.

Clerk of county board shall countersign receipts and retain one, &c.

safely keep the same in his office; the said clerk shall also make the same entries on the list of lands kept by him, as are required to be made by the treasurer; no receipt signed by the treasurer, for the payment of taxes as specified in this section, shall be any evidence of the payment of such taxes, in the lands of any person except the clerk of the board of supervisors, unless the same shall first be countersigned by such clerk.

Lands upon which taxes, &c., remain unpaid three years, to be sold.

SECTION 115. All parcels of land, or parts thereof, or undivided shares thereof, described in such lists, upon which the taxes shall remain unpaid, for three years after the first Monday of April in the year in which such list shall be made, shall be sold by the county treasurer, to pay such taxes, together with the interest and charges due thereon, as hereinafter provided.

Twelve weeks, notice of sale to be given; contents of notice, &c.

SECTION 116. The treasurer shall, within twenty days after the first Monday of December in each year, cause to be published in a newspaper printed in his county, if there be such newspaper,—and if none, then in a newspaper printed in an adjoining county, if there be one, but if there be no such newspaper printed in the same or an adjoining county, then in a newspaper printed at the seat of government, such publication to continue once a week for twelve successive weeks,—a list of all the lands contained in the list in his office, on which the taxes, charges, and interest specified in said list, shall have remained unpaid for two years next previous to the first Monday of April preceding the making of such list, and which still remain unpaid, specifying in the list so published, each tract or lot, the name of the person to whom assessed, if any, and the amount of taxes, charges, and interest, calculated at the rate of twenty-five *per centum per annum*, up to the day fixed for the sale thereof, due on each parcel, and the year in which such unpaid taxes were assessed, together with a notice that so much of each tract or parcel of land described in said list, as may be necessary for that purpose, will, on the first Monday of April next after the publication of such list and notice, be sold by such treasurer at public auction, at some public place, naming the same in such notice, at the seat of justice of the county, for the payment of the taxes, interest, and charges, specified in such list, and due thereon.

If no newspaper printed in county, notices to be posted twelve weeks.

SECTION 117. If no newspaper be published in such county, the county treasurer shall, at least twelve weeks previous to the time fixed for the sale of any lands for taxes, cause to be posted up copies of the list and notice specified in the preceding section, in at least four public places in his county, one of which copies shall be posted up in some conspicuous place in his office.

Taxes may be paid at any time before sale.

SECTION 118. Any person may pay the taxes on any parcel of land described in such published list, or on any part, or undivided interest thereof, by paying to the county treasurer the sum specified in such published list as due thereon, or such portion thereof as the part or interest paid upon shall amount to, together with the cost of advertising the same, at any time before the sale thereof by said treasurer, and on making such payments, the

treasurer shall deliver duplicate receipts therefor as hereinbefore provided.

SECTION 119. Every printer who shall publish such statement and notice, shall, immediately after the last publication thereof, transmit to the treasurer of the proper county, an affidavit of such publication, made by some person to whom the fact of publication shall be known; and no printer shall be paid for publishing any such list and notice, who shall fail so to transmit such affidavit within six days after the last publication thereof. Printer to transmit affidavit of publication, &c.

SECTION 120. The county treasurer shall also make or cause to be made an affidavit or affidavits of the posting of such statement and notice as above required, which affidavits, together with the affidavits of publication, shall be carefully preserved by him, and deposited as hereinafter specified. Treasurer to make affidavits of posting notices and preserve same.

SECTION 121. On the day designated in the notice of sale, the several county treasurers shall commence the sale of those lands on which the taxes, interest, and charges shall not have been paid, and shall continue the same from day to day (Sundays excepted) until so much of each parcel thereof shall be sold as shall be sufficient to pay the taxes, interest, and charges thereon; and all moneys received on such sale shall be paid into the county treasury. When sale to commence, and how long to continue. 4 Wis., 224. 8 Chand., 297.

SECTION 122. The person at such sale offering to pay the taxes, interest, and charges on any tract or parcel of land, for the least quantity thereof, shall be the purchaser of such quantity, which shall be taken from the north side or end of such tract or parcel, and shall be bounded on the south by a line running parallel with the northerly line thereof, if such line be a single straight line, otherwise the south line of the portion so sold shall run due east and west; and in case no bid shall be made for the payment of the taxes, interest, and charges on any such tract or parcel of land for a portion thereof, then the whole of such tract or parcel shall be sold. Who to be deemed purchaser and how land to be sold.

SECTION 123. The county treasurer may in his discretion require immediate payment of every person to whom any parcel of such land shall be struck off, and in all cases where payment is not made in twenty-four hours after the bid, he may declare such bid canceled and sell the land again, or may sue the purchaser for the purchase money, and recover the same with costs and ten per cent. damages; and any person so neglecting or refusing to make payment, shall not be entitled after such neglect to have any bid made by him received by the treasurer during such sale. Treasurer may require immediate payment, and when land resold, or purchase money recovered. Penalty for neglect to pay purchase money.

SECTION 124. If any parcel of land cannot be sold for the amount of taxes, interest, and charges thereon, it shall be passed over for the time being, but shall before the close of the sale be re-offered for sale; and if the same cannot be sold for the amount aforesaid, the county treasurer shall bid off the same for the county for such amount. If land not sold, to be re-offered; and if still unsold, to be bid off for county.

SECTION 125. When any land is offered for sale for any taxes, it shall not be necessary to sell the same as the property of any particular person, and if it should be sold as the property of any Lands sold for taxes need not be sold as the property of any

person, and  
misnomer not to  
vitiate.

Lands bid off  
for county to  
continue to be  
taxed, &c.

R. A., 1858.

County treasurer  
to execute  
deed to pur-  
chaser.

Id.

Form of deed.

such person, no misnomer of the owner or supposed owner, or other mistake respecting the ownership of such land, shall ever effect the sale or render it void or voidable.

SECTION 126. All lands bid off for the county, as provided in the preceding sections, shall continue liable to be taxed in the same manner as if they were the property of individuals, and such taxes, and the interest and charges thereon, shall be a lien on such lands, and shall be paid out of the county treasury while such lands belong to the county, but no lands bid off by the county shall be offered for sale for any taxes levied thereon subsequent to such bid, until such land shall have been sold by such county.

SECTION 127. The county treasurer shall execute and deliver to each purchaser, on the payment of his bid or bids, and if the same be struck off to the county, then to such county, a deed of conveyance of the lands so purchased, which deed shall be in the following or other equivalent form, to wit:—

“To all to whom these presents shall come, greeting.

“Whereas at a sale of lands made by A. B., treasurer of the county of \_\_\_\_\_ at public auction at \_\_\_\_\_ in the said county of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord, one thousand eight hundred and \_\_\_\_\_, for the non-payment of the taxes levied and assessed thereon for the year one thousand eight hundred and \_\_\_\_\_, and which remained unpaid on the day of such sale, together with the costs and charges due therewith, the following described piece or parcel [pieces or parcels] was [or were] sold to \_\_\_\_\_ who was the best bidder therefor, for the sum of [or if more than one tract or parcel was sold to such purchaser, then for the following mentioned sums, to wit:—describing each tract purchased separately and state the sum for which each was sold, and if a part of any parcel or lot shall be sold for the taxes on the whole of such parcel or lot, then describe also the whole of the lot or parcel for the tax upon which such part thereof was sold] \_\_\_\_\_ dollars and \_\_\_\_\_ cents, which sum [or if more than one lot or parcel was purchased, ‘which several sums’] was the whole amount of taxes assessed, due, and unpaid on said tract [or several tracts] of land for the year aforesaid, together with the interest and costs due thereon and the charges of such sale, and has been paid by the said \_\_\_\_\_ to the said A. B., county treasurer aforesaid.

“Now, therefore, know all men by these presents that the county of \_\_\_\_\_ in said state, and the state of Wisconsin, [if the deed be to the county, then omit the words ‘the county of \_\_\_\_\_ in said state,’] in consideration of sum of money aforesaid, and the premises, and in conformity to law, hath, and doth hereby give, grant, and convey the tract [or several tracts] of land above described, together with the hereditaments and appurtenances, to the said \_\_\_\_\_ and to his heirs and assigns, to their sole use and benefit forever.

“In testimony whereof I, A. B., county treasurer of the county of \_\_\_\_\_, have executed this deed pursuant to and in virtue of the authority in me vested by law, and for and on behalf of the said state, and of the county aforesaid, [the words ‘and of the county treasurer aforesaid’ to be omitted when the deed is to the county,] and have hereunto subscribed my name officially and affixed my seal at \_\_\_\_\_ in the said county of \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord, one thousand eight hundred and \_\_\_\_\_.

“Done in presence of \_\_\_\_\_.

A. B., county treasurer of the [L. S.]  
county of \_\_\_\_\_.”

Effect of deed  
when duly wit-  
nessed and re-  
corded.

3 Chand., 76.

Such deed, when duly witnessed and acknowledged, may be recorded as other deeds of land, and with like effect, and when recorded in the office of register of deeds of the proper county,

shall vest in the grantee therein named an absolute estate in fee simple in the land therein described, subject, however, to all unpaid taxes and charges which are a lien thereon; and such deed, when so recorded, shall be *prima facie* evidence of the regularity of all the proceedings, from the valuation of the land by the assessor inclusive, up to the execution of the deed.

SECTION 128. The county treasurer shall, within ten days after the close of any sale of lands for the non-payment of taxes as provided in this chapter, record in a book to be kept by him in his office for that purpose, the list and notice required to be published by the provisions of section one hundred and sixteen of this chapter, and the affidavit or affidavits of the publication of such list and notice required to be made by the provisions of section one hundred and nineteen of this chapter, and when such list and notice shall have been posted up in said county as required by section one hundred and seventeen of this chapter, then he shall also record the affidavit or affidavits of the posting up of such list and notice, and the said county treasurer shall add to such record a certificate signed by him, certifying that the same is a true and perfect copy of the original list and notice, and of the affidavits of the publication thereof, (or of the publication and posting thereof, as the case may be;) and he shall file such original list, notice, and affidavits in his office; the said treasurer shall also, within the same time, record in the same book a statement containing a description of each tract and parcel of land so sold by him, specifying the name of the person or county to whom sold, the amount for which each parcel was sold, and if a part of a lot or tract of land was sold for the payment of the taxes on the whole lot, specifying the lot for the taxes upon which such part was sold; such record shall be signed by the county treasurer making the same.

County treasurer to record list, notice, and affidavit of publication, &c., and certify the same.  
R. A., 1858.

SECTION 129. The statement required to be recorded by the county treasurer as provided in the preceding sections, may be in the following or equivalent form, viz.:—

Form of statement.  
Id.

"I, A. B., treasurer of the county of \_\_\_\_\_, do certify that on the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 18—, [or if the sale shall have been continued more than one day, specifying the days,] at \_\_\_\_\_, in said county, I did sell at public auction to the best bidders, as provided by law, for the non-payment of taxes assessed thereon for the year A. D. 18—, together with the interest and charges due thereon at the date of such sale and remaining unpaid, the several lots and parcels of land, being in said county, to the persons named in, and for the sums specified in the following tabular statement, to wit:—

TABULAR STATEMENT  
of lands sold at the tax sale above specified.

Names of persons to whom sold.	Description of property sold.	Section.	Town.	Range.	Sum sold for.	Date of sale.	Description of property to pay the taxes upon which the land was sold.
A. B.,	10 acres of the north end of the W. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ ,	10	10	10	10.00	Aug. 1, 1858.	W. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ of sec. 10.
C. D.,	E. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ ,	10	10	10	5.00	do.	Same as land sold.

"In witness whereof I have hereunto affixed my official signature this — day of —, A. D. 18—.

"A. B., treasurer of the county of —."

When lands of minors may be redeemed and how.

R. A., 1858.

SECTION 130. The lands of minors, or any interest they may have in lands sold for taxes and conveyed as provided in this chapter, may be redeemed from such sale at any time before such minor comes of age, or within one year thereafter; in order to make such redemption, such minor, or some person in his behalf, shall pay to the county treasurer the sum for which such lands were sold, and the cost of the tax deed and the recording the same, with interest thereon from the date of such sale, at the rate of twenty-five per cent, *per annum*, and all other taxes, costs, and charges which shall remain unpaid on such lands at the time of making such redemption, assessed thereon subsequent to the date of the assessment of the taxes for which the same was sold, and all other taxes assessed subsequent to the date last aforesaid, which shall have been paid by the person to whom said lands were sold, or any other person claiming under him, with interest thereon at the rate of twenty-five per cent. *per annum*, from the date of such payment, so far as such payment can be ascertained from the books and records in the office of such treasurer; and for all the moneys so paid, the treasurer shall give a proper receipt to the person making such payment; from the time of making the payments hereinbefore provided, the deed given upon the sale shall be void, as against said minor and all persons claiming under him: *provided, however*, that the person to whom such land was sold, and those claiming under him, shall have a lien on the same for all other taxes which he or they may have paid on said lands after the date of such sale, and which shall not have been paid by said minor to the county treasurer as hereinbefore provided; and he or they may enforce such lien against said land by action, as in other cases.

Moneys received for redemption to be paid to purchaser on his releasing title, &c.

Id.

SECTION 131. All moneys received by the county treasurer for the redemption of lands under the provisions of the preceding section shall be paid over to the person to whom such land was sold, or those claiming under him, on his delivering to such treasurer, for the use of the person redeeming the same, a release of title to such land, duly executed and acknowledged.

Treasurer to enter name of person redeeming, time thereof, and amount paid to redeem.

Id.

SECTION 132. The treasurer shall enter in the record of the sale of the land redeemed in the manner provided in the next preceding sections, the name of the person redeeming the same, the time when the same was redeemed, and the amount paid for the redemption thereof.

No action to be maintained by minor, unless he has redeemed as herein required.

Id.

SECTION 133. No action shall be maintained by a minor, or any other person claiming under him, for the recovery of the possession of any land sold for taxes, against the person to whom such land was sold, or any person claiming under him, unless he shall have first made the payments required by section one hundred and thirty of this chapter.

County board may direct sale and conveyance of lands convey.

SECTION 134. The board of supervisors of any county may, by an order to be entered in their records, authorize the clerk of their board to sell and convey, by deed duly executed and delivered

by said clerk, under his official signature and seal, and sealed with the seal of said board of supervisors for such county, any lands conveyed to such county for the non-payment of taxes as provided in this chapter.

ed to county for non-payment of taxes.

R. A., 1858.

SECTION 135. No action shall be maintained by the grantee named in any deed of conveyance executed by any county treasurer, on the sale of lands for the non-payment of taxes as provided in section one hundred and twenty-seven of this chapter, or any other person claiming under such grantee, to recover the possession of the lands described therein, or any part thereof, or interest therein, unless such action shall be brought within three years next after the date of such deed; or unless such grantee or those claiming under him shall have paid the taxes assessed on such land for five years next after the date of such deed; or unless such grantee or those claiming under him shall have been in the actual and continued possession of said lands, claiming title under such deeds for three years previous to the expiration of five years next after the date of such deed; in the two cases last mentioned, such action may be brought within the time limited by law for the bringing of actions for the recovery of real estate, after the date of such deed.

No action by grantee to recover lands unless brought within three years, &c.

Id.

SECTION 136. No action shall be maintained by the former owner or owners of any land, or by any person claiming under him or them, to recover the possession of the lands which shall have been conveyed by any county treasurer, by deed, as provided in section one hundred and twenty-seven of this chapter, or any part thereof, or for the purpose of rendering such conveyance null and void, against the grantee in such deed, or those claiming under such grantee, when such grantee or those claiming under him shall have entered into the actual possession of the lands so conveyed, claiming title under such deed, within one year after the date of such deed, and shall have continued in the actual possession thereof, for the term of three years, and paid all taxes assessed thereon after the date of such deed, unless such action shall be commenced within four years next after the recording of such deed in the office of the register of deeds of the proper county.

No action by former owner to be maintained, unless brought within four years, &c.

Id.

SECTION 137. What shall constitute a possession of lands, within the meaning of the preceding sections, and the extent of such possession, shall be governed by rules of law established by section seven of chapter one hundred and thirty-eight of the revised statutes; and the limitations for bringing actions prescribed in the two preceding sections, shall not apply to any person who shall be a minor at the time such right of action shall accrue, but such minor may bring such action or actions after the time limited at any time during his minority, and within one year after, but not after that period.

Definition of possession in two preceding sections.

Id.

SECTION 138. No sale of lands for taxes, and no deed made in pursuance thereof, shall be of any validity whatever, if the taxes for which the same are sold shall have been paid prior to such sale, and none of the provisions of sections one hundred

No sale, &c., to be valid, if the taxes were paid prior to sale.

Id.



and thirty-three and one hundred and thirty-six of this chapter shall apply to any person or persons claiming title under such deed.

Grantee may, within three years, commence actions against former owner to bar his claim, &c.

R. A., 1858.

SECTION 139. The grantee named in any deed or conveyance made by a county treasurer, on the sale of the lands for the non-payment of taxes, as provided in this chapter, his heirs, executors, and assigns, may at any time, within three years after the date of such conveyance, commence an action against the person or persons owning the lands, described in such conveyance at the time of making the sale upon which such conveyance was made, or any parcel thereof or interest therein, or against any person or persons claiming under such owner or owners, for the purpose of barring such former owner or owners and those claiming under them of all right, title, interest, or claim in such land.

Action must be brought in county where lands lie.

Id.

SECTION 140. Such action must be brought in the circuit court of the county in which the lands, or some parcel of them, the title to which is sought to be barred by such action, are situated, and the plaintiff in such action may include in his complaint, all the lands described in such conveyance, or any separate parcel or as many separate parcels thereof as he shall see fit, and he shall make defendants, all persons who were the former owners of the several parcels of land included in his complaint, or those claiming under them, or claiming any interest therein.

What plaintiff shall set forth in his complaint.

Id.

SECTION 141. The plaintiff in such action shall set forth in his complaint, a description of all the lands, the title to which is sought to be barred by such action; that he claims title to such lands under a conveyance made by a county treasurer under the provisions of this chapter, and set forth therein a copy of such conveyance. The plaintiff shall set forth in his complaint, the name or names of the former owner or owners of the several tracts of land described therein, or the names of the persons claiming under such owner or owners, specifying the persons claiming each separate parcel thereof, and the amount of all taxes paid by him on the several tracts of lands described in such complaint, which were assessed thereon subsequent to the tax for the non-payment of which the same were sold, the time of payment and the amount paid on each separate parcel. Such complaint shall also contain a prayer for judgment against such former owner or owners, or those claiming under them, barring them and each of them, and all other persons claiming under them subsequent to the commencement of such action, from all right, title, interest, or claim in and to said lands or any part thereof.

What defendants may answer to such complaint.

Id.

SECTION 142. The defendants in such action may answer severally, or such of them as are jointly interested in any separate parcel or parcels of the lands described in the complaint, may answer jointly, that the lands described in such complaint, or some part or parts thereof, and to which the defendant or defendants so answering claim title on some interest therein, were not liable to

taxation at the time the tax, for the non-payment of which the land was sold and conveyed as specified in the complaint, [*was levied,*] or that the tax, for the non-payment of which said land purported to be sold, was in fact paid before such sale, or that the deed, a copy of which is set forth in the complaint, was never executed by the county treasurer whose name is subscribed thereto; and no other defense to such action shall be set up in the answer of any defendant or defendants, unless the defendant or defendants setting up the same shall at the time of filing the answer deposit with the clerk of the court in which such action is pending, for the use of the plaintiff in such action, the sum for which the parcel or parcels of land, as to which they defend, was sold, together with the interest thereon, at the rate of twenty-five per cent. *per annum* from the date of such deed, and also all such sums as shall have been paid by the plaintiff, for subsequent taxes on such parcel or parcels, with interest thereon from the time of payment, at the rate of twenty-five per cent. *per annum*, to the time of making such deposit, and shall state in the answer the fact that such deposit has been made, and the amount thereof, and that such defendant is ready to pay such portion of the costs and disbursements in said action as shall be adjudged just and reasonable, in case the plaintiff shall elect to receive such deposit, and release to said defendant or defendants the parcel or parcels of land, on account of which such deposit is made; and any defendant or defendants making the deposit and offer aforesaid, may set up in their answer any other matter of defense which will avoid such conveyance, but no answer merely alleging the defendant's title or denying the plaintiff's title to the lands described in such complaint, or any part or parcel thereof, or which merely alleges that the conveyance to the plaintiff is void, shall be a sufficient answer, but every answer shall state specifically the grounds on which the defendant or defendants rely for avoiding the conveyance of the plaintiff.

No other defense to be set up, unless defendant deposit with clerk of court the sum for which land was sold and interest, &c.

SECTION 143. The plaintiff may, at any time within twenty days after receiving an answer showing that a deposit has been made by any defendant or defendants, as prescribed in the preceding section, give notice to such defendant or defendants, that he elects to receive such deposit, and that he will, at a time specified in such notice, apply to the clerk of the circuit court, circuit judge, or court commissioner to adjust the costs which said defendant or defendants ought to pay, and that upon the payment of the costs so adjudged, he will release to such defendant or defendants, all right, title, and claim which he has to the parcel or parcels of lands on account of which such deposit is made.

Plaintiff may give notice that on payment of costs, &c., he will release.

SECTION 144. On the payment of the costs by such defendant or defendants, the said plaintiff shall execute a release to said defendant or defendants, of all right, title, interest, or claim in said parcel or parcels of lands, duly acknowledging the same, and deliver it to the said defendant or defendants, and thereupon said action shall be deemed discontinued as to the said parcel or parcels of land so released.

On payment of costs the plaintiff shall execute release.

SECTION 145. In any action maintained under the provisions of this chapter, the production of the deed, a copy of which is set

Deed to be *prima facie* evidence of absolute title.

R. A., 1858.

forth in the complaint, substantially in the form prescribed by section one hundred and twenty-seven of this chapter, or a certified copy of the record thereof, shall be *prima facie* evidence of an absolute title in fee simple in the grantee therein named, his heirs or assigns, in and to the land therein described.

Issues to be tried by the court, unless trial by jury demanded.

Id.

SECTION 146. All issues of fact and of law joined in any such action, shall be tried by the court, unless the court shall otherwise direct, or unless a party to an issue of fact in any such action shall demand a trial by jury, in which case such issue shall be tried by jury as other issues of fact.

Issues as to separate parcels of land shall be tried separately.

Id.

SECTION 147. The trial of any issue of fact or of law in such action, joined with any defendant or defendants, claiming title to and defending as to any separate parcel or parcels of land, shall be had separately, and separate judgment may be rendered on such issue.

Judgment for plaintiff against any defendant, a bar to such defendant and all claiming under him.

Id.

SECTION 148. If a judgment shall be rendered, either for want of an answer or upon the trial of an issue of law or fact, in favor of the plaintiff and against the defendants, claiming said lands, or against the defendant or defendants claiming any separate parcel or parcels thereof, such judgment shall forever bar such defendants, and all others claiming under them, after the commencement of said action, from all right, title, or interest in said lands, or in such separate parcel or parcels thereof, and such judgment shall be so entered in the judgment book.

Judgment for defendant to direct release, &c., by plaintiff.

Id.

SECTION 149. If in any such action, judgment be rendered in favor of a defendant or defendants claiming any parcel or parcels of said lands or interest therein, such judgment shall direct the plaintiff to release to such defendant or defendants all right or claim under the deed set forth in his complaint, to the lands claimed by such defendant or defendants, in whose favor such judgment shall be rendered, with costs to such defendant or defendants, and the money, if any, deposited by such defendant or defendants as required by the provisions of section one hundred and forty-two of this chapter, shall be applied in payment of such costs, and the surplus of such deposite, if any, shall be paid to the plaintiff.

When plaintiff cannot ascertain name of owner, he may proceed against "unknown owners."

Id.

SECTION 150. If the plaintiff, in an action commenced under the provisions of section one hundred and thirty-nine of this chapter, cannot ascertain who are the proper persons to make defendants as to any tract or parcel of land described in his complaint, he may allege that fact in his complaint, and they may be proceeded against as absent defendants, and shall be described in the proceedings as "unknown owners."

If defendant a minor, action to be discontinued as to him.

Id.

SECTION 151. If a defendant in any action instituted under the provisions of section one hundred and thirty-nine of this chapter, being the owner of any land described in the plaintiff's complaint, at the time the same was sold for the non-payment of taxes thereon, and a minor, shall not have arrived at the age of twenty-one years at the time of the commencement of such action, such action shall be discontinued as to such defendant.

No action to be commenced by any person under sec. 139,

SECTION 152. No action shall be commenced by any person under the provisions of section one hundred and thirty-nine of this chapter, after a judgment shall have been rendered against

him in an action founded on such tax deed, commenced by him after judgment or those under whom he claims, for the recovery of the possession of the lands described in such deed, or any part thereof, nor after a judgment shall have been rendered against him in an action brought by the former owner to recover possession of the lands described in such deed, or any part thereof.

SECTION 153. All lands heretofore sold for the non-payment of taxes, under the provisions of law existing at the time of such sale, shall be subject to be redeemed, and conveyed when not redeemed, as now provided by law, and all laws now in force providing for the sale, redemption, and conveyance for the non-payment of taxes, declaring the effect which shall be given to tax deeds as evidence, and all laws limiting the time within which actions may be brought by or against persons claiming under such tax deeds, repealed by this act, shall be and remain in full force and effect, notwithstanding such repeal, as to all sales, redemptions, and conveyances, made under the provisions of such laws.

SECTION 154. If, after the conveyance of any lands sold for taxes, it shall be discovered that the sale was invalid, the county board of supervisors shall cause the money paid therefor on the sale, and all subsequent taxes and charges paid thereon by the purchaser or his assigns, to be refunded, with interest on the whole amount at the rate of seven per cent. *per annum*, upon the redelivery of the deed to be canceled; and in all such cases, if the county treasurer shall have offered to the person entitled thereto his money as aforesaid, and such person shall refuse to receive the money and cancel the deed, he shall never be entitled to receive any interest on the money so paid by him, after the day of such offer and refusal; nor shall any recovery ever be had against the county on the covenants of such deed.

SECTION 155. If the county treasurer shall discover, before the sale aforesaid, that on account of irregular assessments, or of any other error, any of said lands ought not to be sold, he shall not offer the same for sale.

SECTION 156. Whenever, on account of an erroneous or defective description of any lands, or any other defect, if such lands were justly taxable, the same shall have been stricken from the assessment roll, or shall have been omitted to be sold at any tax sale, the county board of supervisors shall cause such lands to be correctly described, and such uncollected tax to be entered and collected upon the assessment roll of the next succeeding year, in the same manner as the taxes assessed in such last-named year; but if such lands cannot be correctly described, or if from any other cause the tax so unpaid cannot be collected on the same, said board shall raise such tax, or so much thereof as would have belonged to the county and state revenue, upon the proper town or ward, or otherwise correct such error as they shall deem equitable.

SECTION 157. If the county treasurer shall, in any year, omit or fail to sell the lands upon which the taxes shall have remained unpaid for two years, at the time fixed in section one hundred

after judgment against him, &c.  
R. A., 1858.

Lands heretofore sold, to be re- deemed or conveyed under law existing when sold.

Id.

When county board may refund purchase money, &c., after conveyance, &c.

When county treasurer should not sell, on account of irregularities, &c.

When uncollected tax on land may be collected the succeeding year.

When county treasurer omits to sell, he may

sell in ensuing year

and sixteen of this chapter, he shall advertise and sell such lands on the first Monday of April next ensuing; and such advertisement and sale, and proceedings subsequent thereto, shall conform in all respects to the provisions of this chapter, and shall be as valid and binding as like sales made on the first Monday of April as heretofore prescribed in this chapter.

Moneys in county treasury belonging to town, to be drawn by town treasurer, &c.

SECTION 158. If any portion of the uncollected taxes mentioned in the preceding section, shall be collected and paid into the county treasury, which belong to any town, or to any school or road district in any town, such taxes shall be drawn by the treasurer of the town in which they belong, and paid over by such treasurer as the law requires; and the amount of every such tax belonging to any town, school or road district, shall be ascertained from the record of taxes in the town for the year in which such uncollected taxes were assessed.

If tax improperly paid, to be refunded within two years, &c.

SECTION 159. If any person, within two years after the payment of any tax by him, can satisfactorily show to the county board of supervisors that the same was improperly assessed, or was paid by mistake when it was not legally chargeable, the said board shall order the same to be repaid by the county treasurer; and if the tax so refunded, or any portion thereof, be properly chargeable to any town, it shall be so charged.

Taxes to be a lien on lands, and costs on two or more parcels to be apportioned.

SECTION 160. All taxes assessed on any tract or parcel of land, and all costs, charges, and interest thereon, shall be a lien on such land until paid, and all costs and expenses which shall accrue jointly or in the aggregate, on two or more tracts or parcels of land, shall be apportioned in equal parts upon the several tracts or parcels.

#### MISCELLANEOUS PROVISIONS.

Persons having lien on lands may pay taxes and collect same.

SECTION 161. Any person who has a lien, by mortgage or otherwise, upon any lands on which the taxes have not been paid, may pay such taxes, and the interest and charges thereon, and the receipt of the person authorized to receive such tax shall constitute an additional lien on such land, to the amount therein specified, and the interest thereon; and the amount so paid and interest thereon shall be collectible with, as part of, and in the same manner as, the amount secured by the original lien.

Provisions relative to towns, when applicable, to apply to cities and wards, &c.

SECTION 162. The provisions of this chapter relative to towns shall be construed as applying to cities or wards, where the same are applicable, unless otherwise provided: but whenever a city constitutes part of a town, it shall, for the purpose of raising state, county, and town revenue, be regarded as part of such town.

City treasurer to act as collector, same as town treasurer, &c.

SECTION 163. The treasurer of any city, acting in the capacity of collector of taxes under the provisions of this chapter, shall so far as practicable, unless otherwise provided, exercise the same powers and perform the same duties as are herein conferred upon and required of town treasurers, and such city treasurer shall be subject to the same penalties and liabilities as are herein provided for town treasurers.

Losses sustained

SECTION 164. All losses which may be sustained by the de-

fault of any officer of any town or city, in the discharge of the duties imposed by this chapter, shall be chargeable on such town or city, and all losses that may be sustained by the default of any county officer in the discharge of such duties, shall be chargeable on such county; and the county board of supervisors shall add such losses to the next year's taxes of such town, ward, or county, as the case may be.

by default of any town, city, or county officer, how to be charged and collected.

SECTION 165. When any tax on any real estate shall have been paid by or collected of any occupant or tenant, and any other person by agreement or otherwise ought to pay such tax or any part thereof, such occupant or tenant shall be entitled to recover by action the amount which such person ought to have paid, with interest thereon at the rate of twelve per cent.; or he may retain the same from any rent due or accruing from him to such person for the real estate on which such tax is so paid.

When tenant may recover tax on land paid by him, and how.

SECTION 166. It is hereby made the duty of every county treasurer to keep a full, true, and correct account of all moneys by him received for taxes paid to him, and upon redemption of lands from sales thereof for the non-payment of taxes, in which account shall be stated the name of the person or officer who, and for whom the money is paid, the time when, and a description of the property whereon, the taxes were to such treasurer paid.

Duty of treasurer to keep correct account of all moneys received for taxes and on redemption, &c.

SECTION 167. It shall be the duty of the clerk of the county board of supervisors, who is hereby declared to be the county clerk, to keep an account in like manner as is provided in the preceding section, as to all moneys by him paid over to the county treasurer, and also as to all moneys by him received for the redemption of land from sales thereof, and also as to all moneys that he may receive in his official capacity for any purpose or in any amount whatever.

Duty of clerk of county board to keep like account.

SECTION 168. The accounts so as aforesaid kept shall be and are hereby declared to be public records.

Such accounts public records.

SECTION 169. It shall be the duty of each of the county treasurers of this state to pay to the treasurers of the several towns in their respective counties, on demand, all moneys collected by them, whether by sale for taxes or otherwise, upon the delinquent tax list of any town: *provided*, they shall retain in the treasury the amount due from any, to the county.

County treasurers to pay to town treasurers, money collected on delinquent taxes.

SECTION 170. If any town treasurer shall fail to make settlement of the taxes included in his assessment roll, within the time required by this chapter, the county treasurer shall charge such town treasurer five per cent. damages, and twelve per cent. interest *per annum*, from the day payment should have been made on the balance of unsettled taxes due from him; and if any town treasurer shall withhold the payment of any public moneys collected or received by him, after the same should be paid and shall have been demanded, he shall be liable to pay ten per cent. damages and twelve per cent. interest, as above specified, on such moneys; which moneys, damages, and interest may be collected by action upon such town treasurer's bond, or as provided in the one hundred and fifth section of this chapter.

Penalty on town treasurer if he fail to settle or pay over moneys collected.

SECTION 171. If any person shall be injured by the false return

Person injured

by false return, &c., of town treasurer, to recover double damages.

County failing to organize, it shall be attached to adjoining county, &c.

How taxes are to be assessed on such unorganized county.

County attached to another for judicial purposes, to pay expenses of prosecuting crimes, &c.

Moneys collected for a specific object not to be applied to any other object.

Penalty on officer neglecting to perform duties imposed by this chapter.

Penalty on county treasurer for failure to pay moneys into state treasury as required.

When grantor and when grantee shall pay the taxes.

or fraudulent act of any town treasurer, such person shall recover upon action brought on the bond of such treasurer, of him and his sureties double damages and costs of suit.

SECTION 172. If any county organized by act of the legislature for judicial or county purposes shall fail to organize as by law required for the term of one year from the passage of this act, it shall be attached and hereby is attached to the county which shall have been organized for judicial purposes for the longest period of time and which shall adjoin and form a part of the boundary of the county which shall have failed to become duly organized as by law required. And the town of such organized county forming a part of the boundary of the county not duly organized which shall have the least amount of taxable property of such town, shall have power, and it is hereby made the duty of the supervisors, assessors, and collectors and treasurers of such town, to levy, assess, and collect a tax on all the taxable property in such unorganized county, equal to the same per cent. as shall be levied in such town upon property within the original boundary of such town, for town, school, county, state, or other tax required by law to be levied and collected, any law to the contrary notwithstanding.

SECTION 173. Any county attached to another county for judicial purposes shall pay annually into the treasury of the county organized for judicial purposes, all costs and expenses incurred in prosecuting crimes and misdemeanors, perpetrated in said attached county, or other county proceedings and actions, out of the county treasury of the county so attached for judicial purposes, and it is hereby made the duty of the board of county supervisors of such county to provide a sum annually, sufficient for that purpose, any law to the contrary notwithstanding.

SECTION 174. Whenever any moneys shall have been collected or received by any officer for any distinct or specific object or purpose, no portion of them shall be paid or applied to any other object or purpose, without due authority, but shall be kept a separate fund for such specific object; and any officer failing to comply with the provisions of this section, shall be liable to a fine not exceeding five hundred dollars, or to imprisonment not exceeding six months.

SECTION 175. Any officer who shall willfully neglect or refuse to perform any of the duties imposed upon him by this chapter, shall be deemed guilty of a misdemeanor, and on conviction, shall be punished by fine or imprisonment, the fine not to exceed five hundred dollars, nor the imprisonment six months.

SECTION 176. Whenever any county treasurer shall fail to pay into the state treasury any moneys in his hands for that purpose, at the time prescribed by law, he shall, in addition to other penalties, be liable to the following: if he shall so fail for the space of ten days, he shall forfeit to the state twenty per cent. on the amount withheld; and if he shall fail to pay over such moneys for the space of thirty days after such specified time, he shall forfeit his office of treasurer, and be deemed a public defaulter.

SECTION 177. As between the grantor and grantee of any land, when there is no express agreement as to which shall pay the taxes that may be assessed thereon, before the conveyance, if such land

is conveyed even with or prior to the date of the warrant authorizing the collection of such taxes, then the grantee shall pay the same; but if conveyed after that date, the grantor shall pay them.

SECTION 178. All entries and records made in the county treasurer's books, and in the books of the clerk of the board of supervisors, the assessment rolls and warrants thereto attached, all notices required to be published by such county treasurer, and the proof of the publication or posting thereof filed in his office, in pursuance to the provisions of this chapter, shall be *prima facie* evidence of the facts therein stated, in all judicial proceedings.

Records of treasurer and clerk to be evidence. R. A., 1858.

SECTION 179. The secretary of state shall, from time to time, as he may deem proper, cause to be printed blank assessment rolls, and other forms for proceedings required by this chapter, and shall transmit the same, together with such instructions as he shall think useful, to the several clerks of the boards of supervisors in this state, who shall distribute the same to the several assessors of the towns and wards in their respective counties.

Secretary of state to transmit blank assessment rolls, &c., to clerks to be distributed to assessors.

SECTION 180. It shall be the duty of the secretary of state to cause to be prepared, as soon as practicable, separate lists of the lands patented by this state, in each county thereof, showing in such list the date of the patent, the person to whom patented, and the description of land included in each patent. Such lists when completed shall be certified to as correct by the secretary of state, and forwarded, by mail or otherwise, to the registers of deeds of the several counties, who shall file the same in their respective offices; and annually thereafter, and within ten days after the first Monday in April in each year, the said secretary shall cause to be prepared similar lists of the lands patented in the preceding year, and forward the same to the said registers of deeds, who shall file them in their respective offices in manner aforesaid.

Secretary of state to prepare list of lands patented by state, in each county. Id. Lists to be forwarded to registers of deeds, and filed in their offices.

SECTION 181. In addition to any fees elsewhere specifically allowed, for services to be performed under the requisitions of this chapter, the following shall be allowed, to wit:—

Fees allowed under the provisions of this chapter.

To the county treasurer for every deed of land sold for taxes, seventy-five cents.

For each additional parcel of land described therein after the first, five cents.

To the person taking and certifying the acknowledgment of the same, twenty-five cents.

To the county treasurer for duplicate receipts, given on the payment of any taxes after the same shall have been listed as required by section one hundred and eleven of this chapter, fifteen cents.

For each additional parcel of land described therein after the first, five cents.

To the clerk of the board of supervisors for countersigning any receipt, ten cents.

The treasurer giving deeds or receipts shall include therein as many parcels of lands bid off or owned by any person as such



person may desire, and the above fee shall be paid by such person.

To the printer who shall publish any notice of sale for taxes, for each lot or tract, twenty-five cents for all the insertions.

For drawing affidavit of publication, twenty-five cents; to the person taking and certifying the same, twenty-five cents.

The fees of publication, and all costs, charges, and interest imposed by the provisions of this chapter, shall be a lien until paid, equally with the unpaid taxes.

#### RAILROADS AND PLANK ROADS, HOW TAXED.

Railroad and plank road companies to make annual return of gross receipts.

S. L. 1854, ch. 74.

SECTION 182. That the several railroad companies and plank road companies now organized or hereafter organized in this state, and completed in whole or in part, and being operated or used, shall, on or before the tenth day of January in each year, make out and return, or cause to be made out and returned, to the treasurer of this state, a true and just statement of the gross earnings of their respective roads for the preceding year, up to the first day of January; which statement shall be verified by the affidavit of the secretary and treasurer of each respective company.

To pay tax of one per cent. of gross receipts.

Id.

SECTION 183. It shall be the duty of the said railroad companies and plank road companies to pay or cause to be paid to the treasurer of the state, for the use of the state, on or before the tenth day of January in each year, a sum equal to one *per centum* of the gross earnings of their respective roads so returned, which amount of tax shall take the place and be in full of all the taxes of every name and kind upon said roads, or other property belonging to said companies, or the stock held by individuals therein, and it shall not be lawful to levy or assess thereupon any other or further assessment or tax for any purpose whatsoever; but when a railroad or plank road lies partly within this state, and partly in another state or territory, the company shall pay such proportion of one *per centum* upon the gross earnings of the whole road so returned, as the length of that portion of the road within this state, bears to the whole length of said road.

When road lies partly in state to pay proportion, &c.

Penalty for neglect of railroad company to comply, &c.

Id.

SECTION 184. If any railroad company or its officers shall fail to comply with the requirements of this chapter, such company shall forfeit to the treasurer of this state, for the use of the state, the sum of ten thousand dollars for each case of neglect, to be recovered in the name of the state treasurer by action on this statute.

Ib, as to plank roads.

Id.

SECTION 185. If any plank road company or its officers shall fail to comply with the requirements of this chapter, such company shall forfeit to the treasurer of this state, for the use of the state, the sum of one thousand dollars for each case of neglect, to be recovered in the manner provided in the preceding section.

When companies fail, state treasurer to ascertain earnings and assess tax, &c., and levy and sell, &c.

SECTION 186. If any railroad or plank road company shall fail to make the return required by this chapter, the treasurer of the state shall ascertain, as near as may be, the gross earnings of such delinquent company, and assess thereupon the said one

*per centum*, and shall seize and levy upon the whole or any part of the property, rights, and franchises of said company, and, after giving ten days' public notice of the time and place of sale, shall proceed to sell at public auction the same, to satisfy the amount thereof, together with all costs and disbursements (to be taxed by the attorney general of the state) incurred in making such assessments and sale thereof: *provided, however*, that nothing herein contained shall be so construed as to defeat the right of the treasurer in behalf of the state, to sue for and recover the penalties prescribed in sections one hundred and eighty-four and one hundred and eighty-five of this chapter.

*Chapter 115 of Acts of a general nature of 1858.*

BY WHOM AND WHERE, PROPERTY SHALL BE LISTED.

SECTION 1. Every person of full age and sound mind, not a married woman, shall list the real and personal property subject to taxation, of which such person is the owner, situate and being in the county in which he resides, and all moneys of which he is the owner, in his possession or on deposit, subject to his order, check, or draft; and all credits due from any person, body corporate or politic, whether in or out of such county: *provided*, that *bona fide* debts, owing by any person, company, or firm, may be deducted from the gross amount of moneys and credits of such person, company, or firm. The property of every ward shall be listed by his guardian; of such minor, having no other guardian, by his father, if living; if his father is not living, by his mother; if neither father nor mother be living, by the person having such property in charge. The property of every wife shall be listed by her husband, if of sound mind; if not of sound mind, by herself. The property of every person for whose benefit such property is held in trust, shall be listed by the trustee. The property of every estate of a deceased person shall be listed by the executor or administrator. The property of corporations whose assets are in the hands of receivers, shall be listed by such receivers. The property of every firm, company, or corporation, shall be listed by the principal accounting officer, partner, or agent thereof. Merchants' and manufacturers' stock, and money and credits, shall be listed specifically as such, apart from other personal property.

SECTION 2. Each person required by this act to list property shall make out and deliver to the assessor, when required, a statement or statements of all real and personal property, moneys and credits, which, by the provisions of this act, he is required to list for taxation, either as owner or holder thereof, or as guardian, parent, husband, executor, administrator, receiver, accounting officer, or as agent of the owner, which shall be verified by the oath or affirmation of the person making the same; and if there be no real or personal property, moneys or credits, which the person to whom the assessor shall deliver a notice to make out a statement of property for taxation, is by this act required to list on his own account, or on account of

Persons of full age, &c., to list property subject to taxation.

By whom listed.

Persons required to list to deliver statement verified by oath.

Punishment  
for taking  
false oath.

What state-  
ment must set  
forth and con-  
tain.

others, he shall set forth such fact as the case may require on the blank statement, and shall attest the same by his oath or affirmation. And any person making a false oath or affirmation under any of the provisions of this act, shall be deemed guilty of perjury, and shall be liable to be proceeded against, according to the provisions of law not [now] in force on the subject of perjury.

SECTION 3. Such statement shall truly and distinctly set forth:—

1. The number of horses over one year old.
2. The number of neat cattle over one year old.
3. The number of mules and asses over one and a half years old.
4. The number of sheep over six months old.
5. The number of hogs over six months old; and the first day of June of the year when the statement is made, shall be taken as the time to which the ages of all animals subject to taxation shall refer.
6. Every pleasure carriage of whatsoever kind.
7. Every gold and silver watch.
8. Every piano forte or other musical instrument.
9. All real property of whatever kind or nature, which such person is by this act required to list. Such person shall be required upon the request of the assessor to exhibit to the assessor the animals or the other articles of real or personal property above enumerated.
10. The goods and merchandise which such person is required to list as a merchant.
11. The materials and manufactured articles which such person is required to list as a manufacturer.
12. The money and credits required to be listed.
13. Farming utensils, mechanic tools, law and medical books, surgical instruments, and medicines.
14. All household furniture, beds, bedding, &c., not exempted by law from taxation.
15. The corn, hay, oats, rye, potatoes, fruits, wheat, wool, pork, bacon; and—
16. All other articles of personal property which such person is by this act required to list.

#### OF THE APPRAISAL OF REAL ESTATE.

Assessors must  
appraise real  
property upon  
actual view.

SECTION 4. The assessor or assessors in each town or ward shall make out his or their assessment roll of the taxable property in the town or ward, at the time, and pursuant to the directions and provisions contained in chapter fifteen (*eighteen*) of the revised statutes, and shall, upon actual view, make a true valuation of all real property described on such assessment roll, at the usual selling rates of similar property in the vicinity, considering the value of improvements thereon, and the quality and fertility of the soil, and the local advantages of situation; and the assessor shall not consider, for the purpose of reducing the valuation of real property, that in sales of real estate, credit is usually given

for a part of the purchase money thereof; but the assessor shall value all real estate by him appraised at the price he believes could be obtained therefor, one-third part money in hand, and the remainder payable at some future time or times, with legal interest thereon.

SECTION 5. At the time of taking the list and making the valuation of each piece of real estate, it shall be the duty of the assessor to inform the owner or owners, his, her, or their agent or representative, if residing within the town, or he shall leave a memorandum at his, her, or their residence, of the amount at which his, her, or their real estate has been appraised respectively, and of the time when the board of equalization of the town will meet for the purpose of hearing and determining grievances, and to review, correct, and equalize the roll of the town or ward.<sup>1</sup>

To inform owner  
of such appraisal.

#### PERSONAL PROPERTY.

SECTION 6. Personal property shall be valued at the usual selling prices at the time of listing, and at the place where the same may be; but if there be no usual selling price known to the person required to fix a valuation thereon, it shall be valued at such price as is believed could be obtained therefor in money, at such time or place. Money in possession or on deposit shall be entered in the statement at the full amount thereof: *provided*, that depreciated bank notes shall be entered at their current value. All credits, except those expressly exempted by this act, shall be listed for taxation; and if such credit calls for [a] specific article, for a certain number or quantity of any article or articles of property, or for [a] specific amount of labor or services, it shall be valued at the current price of such property, labor, or services, at the place where payable; but nothing in this act shall be so construed as to include for taxation unliquidated credits, in the form of book accounts, when having no connection with the loaning of money. Annuities shall be valued at such price as the person listing the same believes them to be worth in money. All manufactured articles remaining unsold in the hands of the

How personal  
property is to be  
valued.

<sup>1</sup> Form of notice of assessor to be sent to owner of real estate, as to appraisal.

To \_\_\_\_\_.

Your real estate has been appraised by me as assessor of the \_\_\_\_\_ of \_\_\_\_\_, county of \_\_\_\_\_, Wisconsin, for the current year as follows:—

Description.	Section.	Town.	Range.	Acres.	Valuation.

The board of equalization of said \_\_\_\_\_ will meet for the purpose of hearing and determining grievances, and to review, correct, and equalize the assessment roll, at the \_\_\_\_\_ in said \_\_\_\_\_, on the first Monday of July next.

Dated \_\_\_\_\_, 18—.

\_\_\_\_\_, assessor.

manufacturer shall be valued at the cost of the materials entering into their composition. Sheep shall be valued without reference to the value of the unshorn fleece. No person shall be required to list a greater portion of any credit than he believes to be collectible, nor any greater portion of an obligation given for the payment of rent than the amount of the rent that shall then be actually due. In making up the credits which any person is required to list for himself or for any other person, company, or corporation, he shall be entitled to deduct from the gross amount of such credits, the *bona fide* debts owing by himself, such other person, company, or corporation, as the case may be. But no acknowledgment of indebtedness, not founded on actual consideration, shall be considered a debt, within the meaning of this act. And so much only of any liability, as security for others, as the person making out the statement believes the person is legally and equitably bound to pay on account of the liability of the principal debtor, shall be deducted from credits.

#### MERCHANTS AND MANUFACTURERS.

When person deemed a merchant.

SECTION 7. Every person that shall own, or hold in his possession, subject to his control, any personal property within this state, which shall have been purchased with a view of being sold at an advanced price or profit, or which shall have been consigned to him for the purpose of being so sold, shall be held to be a merchant, and whenever he shall be required, according to the provisions of this act, to make out and deliver to the assessor a statement of his other personal property, he shall include in such statement such personal property appertaining to his business as a merchant; and in estimating the value thereof, the assessor shall take the average value of all such articles of personal property, which the said merchant shall have had in his possession or under his control, during the year next preceding the time of making such statement, if he shall have been so long engaged in such business, and if not so long, during the period that he shall have been so engaged; and the average value of such property shall be ascertained by estimating the amount on hand, as nearly as may be: *provided*, that no consignee shall be required to list for taxation, the value of any property consigned to him for the purpose of being stored or forwarded, if he shall have no interest in such property, nor in any profit to be derived from its sale. The word "person," as used in this and the four succeeding sections, shall be held to mean and include "company," "firm," or "corporation," as the sense may require.

How value of merchandise, &c., shall be estimated.

Merchants commencing after July, &c., to report under oath, &c.

SECTION 8. Every person who shall commence merchandising in any town, city, or village in this state, after the first Monday of July in any year, and the average value of whose personal property so employed shall not have been entered on the assessor's list for taxation, shall report, under oath, to the clerk of the board of supervisors of the county in which he is engaged in such business, the probable amount of the average value of such personal property, intended by him to be so employed, and such

amount shall be entered by said clerk on the assessment roll of such town or city, as if the same had been entered by the proper assessor when listing property for taxation : *provided*, that if such report shall not have been made to the said clerk of the board of supervisors, before the tenth day of November, the said clerk, in his official capacity, shall forthwith notify the clerk of the town or city in which such merchandising is being carried on, of the amount of such property to be so employed, and the name of the person in which such property shall be listed, and the clerk of such town or city shall cause the same to be entered on the list of property for taxation, with the amount of tax to be collected therefrom, and such tax shall be collected in the same manner as if the entry of such property had been made by the assessor.

SECTION 9. Every person who shall purchase, receive, or hold personal property for the purpose of adding to the value thereof by any process of manufacturing, refining, rectifying, or by the combination of different materials, with a view to making any profit thereby, shall be held to be a manufacturer; and such person shall when required to make out and deliver a statement of other personal property, also state the articles purchased or held for the purpose of being used in any process of manufacturing, combining, rectifying, or refining, which he shall have on hand.

Who deemed a manufacturer; to make report when required.

SECTION 10. Every manufacturer, as defined in this act, shall list as part of his personal property, all engines, tools, and machinery of every description, not forming any part of real property, used or designed to be used in any such process of manufacturing, combining, rectifying, or refining.

Machinery, &c., to be listed.

SECTION 11. It shall be the duty of each township and ward assessor, on or before the first day of June, annually, to leave with each person resident in his town, of full age, and not insane, at the office, usual place of business, or residence of such person, a written or printed notice, requiring such person to make out for such assessor a statement of the property which by this act he is required to list, accompanied with printed forms, in blank, of the statements required of such person;<sup>1</sup> and the assessor shall, at the time he delivers such notice and blank form, receive from such person the statement of his or her real and personal property, moneys, and credits, and also personal property, moneys, and credits in his or her hands or possession, as agent of the owner, under oath or affirmation, unless such person shall require further time to make out such statements, in which case he shall call for

Assessors must leave notices requiring statements of personal property to be made.

<sup>1</sup> Form of notice of assessor, requiring person to make out statement of property required to be listed.

To \_\_\_\_\_.

You are hereby required to make out for me, as assessor of the \_\_\_\_\_ of \_\_\_\_\_, county of \_\_\_\_\_, Wisconsin, a statement of the property which, by chapter 115 of the general laws of 1858, you are required to list, for which purpose a blank is herewith furnished:

Dated \_\_\_\_\_, 185—.

\_\_\_\_\_, assessor.

such statement before the fifteenth day of June;<sup>1</sup> and he shall require each person to take and subscribe on such statement, an oath or affirmation to the truth thereof, in such form as the secretary of state shall prescribe, which oath or affirmation, the assessor is hereby authorized and required to administer.<sup>2</sup>

Refusal to make or verify statement a misdemeanor; duty of assessor in such cases.

SECTION 12. In every case when any person shall refuse to make out and deliver to the assessor a statement of real and personal property, moneys, and credits, as provided by this act, or shall refuse to take and subscribe an oath or affirmation to the truth of such statement, or any part thereof, which he is by this act required to verify by his oath or affirmation, he shall be deemed to be guilty of a misdemeanor, and liable to a fine of not less than ten dollars, nor more than fifty dollars, at the discretion of the court, to be recovered before a justice of the peace, in an action of debt; and it is hereby made the duty of the assessor, in the behalf of the town, city, or ward of which he is the assessor, to commence and prosecute said suit to final judgment; and for every such refusal, he shall be liable to a similar fine and prosecution, until he shall consent to make such oath or affirmation; or in case the owner of property is a non-resident of the town, when the assessment is made, or is unknown to the assessor, and has no

<sup>1</sup> Form of blank statement to be furnished by assessor with the foregoing notice.

Statement of property listed by \_\_\_\_\_, of the \_\_\_\_\_ of \_\_\_\_\_, county of \_\_\_\_\_, Wisconsin, for the year 185—:—

	Valuation.
I. _____ horses over one year old, . . . . .	\$ _____
II. _____ neat cattle over one year old, . . . . .	_____
III. _____ mules and asses over one and a half years old, . . . . .	_____
IV. _____ sheep over six months old, . . . . .	_____
V. _____ hogs over six months old, . . . . .	_____
[The ages of all animals above referred to are to be computed and taken to the first day of June.]	
VI. _____ pleasure carriages, and kind, . . . . .	_____
VII. _____ gold and silver watches, . . . . .	_____
VIII. _____ piano forte, or other musical instrument, . . . . .	_____
X. Goods and merchandise, . . . . .	_____
XI. Materials and manufactured articles, . . . . .	_____
XII. Money and credits, . . . . .	_____
XIII. Farming utensils, and mechanics' tools, . . . . .	_____
Law and medical books, surgical instruments and medicines, . . . . .	_____
XIV. Household furniture, (not exempted by law from taxation,) . . . . .	_____
XV. Produce, &c. Bushels—of corn, _____; oats, _____; rye, _____; wheat, _____; potatoes, _____; fruits, _____.	Tons—of hay, _____
_____ Pounds—of wool, _____; pork, _____; bacon, _____;	_____
XVI. Other personal property, . . . . .	_____
IX. Real property, . . . . .	_____

<sup>2</sup> State of Wisconsin. } ss.  
County of \_\_\_\_\_.

I, \_\_\_\_\_, of the \_\_\_\_\_ of \_\_\_\_\_, in said county and state, being first duly sworn on oath, do depose and say, that the foregoing statement contains a just, correct, and true list of the property required of me to be listed, under the provisions of chapter 115 of the general laws of 1858: so help me God.

Taken before me, this \_\_\_\_\_ day of \_\_\_\_\_, 185—.

\_\_\_\_\_, assessor.

resident agent known to the assessor, in whose name the said property can be taxed, the assessor shall, in every such case, proceed to ascertain the amount of real and personal property, moneys, and credits subject to taxation, of which a statement shall not have been delivered to said assessor as aforesaid, as the case may require; and to enable him so to do, he is hereby authorized and required to examine on oath or affirmation, any person whom he may suppose to have knowledge of the amount or value of the property, moneys, or credits which the person so refusing was required to list.

SECTION 13. Each assessor, under the provisions of this act, shall complete his assessment roll, and deposit it with the town clerk of his town, or city clerk of the city, as the case may be, on or before the first Monday of July in every year, and in the manner now provided by law; and it is hereby made his further duty to set forth in his assessment roll, the full number of acres of land assessed in said roll, and the aggregate valuation of the same; also, the aggregate amount of all the personal property assessed.

When assessment roll to be made and what to contain.

SECTION 14. Every assessor who shall in any case refuse or knowingly neglect to perform any duty required of him by this act, or who shall consent to or connive at any evasion of its provisions, whereby any proceedings required by this act shall be prevented or hindered, or whereby any property required to be listed for taxation shall be unlawfully exempted, or the valuation thereof be entered on the tax list at less than its true value, shall, for every such neglect, refusal, consent, or connivance, forfeit and pay to the state, not less than two hundred nor more than one thousand dollars, at the discretion of the court, to be recovered before any court of record in this state.

Assessor to be fined for neglect of duty, &c.

SECTION 15. It shall be the duty of the secretary of state to prepare and cause to be printed the necessary forms to carry into effect the provisions of this act, and to transmit copies of such forms to the clerk of the board of supervisors of each of the counties in this state, immediately upon the publication of this act; and it shall be the duty of each of said clerks to cause to be printed for the use of the assessors of the several townships in his county, such number of said blank forms as may be necessary.

Secretary of state to prepare forms, &c.

SECTION 16. Each assessor shall take and subscribe an oath or affirmation, which shall be certified by the magistrate administering the same, and attached to the return which he is now required by law to make to the county board, in the following form:—

Assessors must take and subscribe an oath.

"I, \_\_\_\_\_, assessor for the town of \_\_\_\_\_, in the county of \_\_\_\_\_, do solemnly swear that the return to which this is attached, contains a correct description of each parcel of real and personal property within said town, as far as I have been able to ascertain the same, and that the value attached to each parcel in said return, is, as I verily believe, the full value thereof, estimated agreeably to the rules prescribed by law for taxation of property in this state."

SECTION 17. Nothing in this act shall be so construed as to include for taxation the capital stock, track, right of way, toll

Act not to include property of



railroads and  
plank roads.

houses, depot grounds, depot buildings, or rolling stock of any railroad or plank road company that is subject to taxation under the laws now in force.

Nor of banks or  
bank capital.

SECTION 18. Nothing in this act shall be so construed as to include for taxation any bank capital or bank stock that is subject to taxation under the laws now in force.

#### CORRECTION AND EQUALIZATION OF ASSESSMENTS.

Town board of  
equalizers, meet-  
ing, power, and  
duty.

SECTION 19. The chairman of the town board of supervisors and the town clerk of each town shall, with the assessor or assessors of such town, constitute a board of equalizers of assessments on property in the town. Said board shall meet at the place where the last town or ward election was held in their town, on the first Monday of July each of every year, at nine o'clock in the forenoon. A majority of said board shall constitute a quorum for transacting the business of the meeting. The chairman of supervisors shall be chairman of the board of equalizers, and the town clerk shall be clerk of the board. Before proceeding to the transaction of any business, the members of such board present shall take and subscribe the following oath:—

“You, each of you, solemnly swear, that you will review, amend, and correct the assessment roll of your town, and justly equalize the value of real estate therein, according to your best judgment and discretion, without fear or favor.”

And it shall be the duty of said board of equalizers,—

1. To examine the assessment roll of the town for the purpose of detecting and correcting all errors in the description of lands.

2. To supply all omissions of real estate and the valuation thereof, so that the real estate in the town shall be placed upon said roll.

3. To ascertain whether the valuation of each piece or parcel of real estate set down on said rolls bears a just relation or proportion to the valuation of other real property of the town; and they may increase or diminish the valuation of any piece or parcel so much *per centum* as may in their opinion be necessary to produce equitable relation between all valuations of real property in the town. Said board, at the time of equalizing valuations as last aforesaid, shall consider the complaint of any person considering himself aggrieved by the valuation put upon his real or personal property by the assessor, and shall hear such proof as the complainant may desire to submit in support of his complaint, and shall fix such value upon the property of the complainant as it shall appear from the evidence they ought, under the provisions of this act, in justice and equity to place thereon.

4. To supply any omissions from the roll of personal property taxable in the town; and said board shall consider any testimony which may be proffered tending to disclose any personal property, taxable in said town under provisions of this act, which has not been listed; and if it shall appear that there is such property, and that the person required by law to list the same failed to do so knowingly and with design to evade the taxation of such property,

in that case the board of equalizers shall place such property upon the roll at double the valuation of the same or similar property when listed by the owner or other person required by law to list the same; but if it shall appear that the failure to list such property was through ignorance or inadvertency, then such property shall be placed upon the roll at the same valuation of the same or similar property duly listed under requirements of this act.

SECTION 20. The mayor and city clerk of any city, with the City board of equalizers, their meeting, power, and duty. aldermen of each ward thereof, serving as members of the county board of supervisors for the year, and the assessor or assessors of each ward, shall constitute a city board of equalizers, and shall meet at the office of the common council of the city, on the day and at the time named for the meeting of town boards of equalization, and shall proceed in all respects as by the provisions of the last preceding section town boards are required to do, so far as the same are applicable, reviewing, correcting, and equalizing the assessment rolls of the several wards in the city in the order of their numbers. The mayor of the city shall be president of the city board of equalizers, and the city clerk, clerk of the same.

SECTION 21. All changes of assessment rolls by town or city Changes by board of equalizers to be recorded. boards of equalization shall be duly recorded; of town rolls by the town clerk in the records of the town; of city rolls by the city clerk in the city records.

SECTION 22. In case of the inability of the chairman of the Vacancies in board, how filled. town board of any town to attend the meetings of the town board of equalizers, or of the alderman designated in section twenty to attend the meeting of the city board, their respective places shall be supplied by some other member of the town board of supervisors or alderman of the ward, as the case may be; and in case of the inability of the town clerk to attend as a member of the town board as aforesaid, a clerk to the board may be appointed by the members thereof present; and in case any city clerk shall fail to attend the meetings of the city board of his city, it shall be lawful for his deputy, if there be a deputy permanently serving in his office, to attend in his place, or if not, then the board may appoint a clerk to the city board of equalizers.

SECTION 23. When the assessment roll of any town or ward Clerks of town and city boards must certify roll to county boards. shall have been received, corrected, equalized, and completed by the town or city board of equalizers, as the case may be, the clerk of the town or city shall cause a full, fair, and perfect copy of the same *[to be made,]* setting forth the aggregate number of acres and the aggregate valuation thereof, as corrected by the board of equalizers, and the aggregate amount of personal property as aforesaid, and the clerk shall attach thereto a certificate signed by him, that the same is a full, accurate, and perfect copy of the assessment roll of the town or ward, naming the same, as made out by the assessor or assessors thereof, and revised, corrected, and equalized by the town or city board of equalizers, and said certified copy shall be forthwith transmitted to the clerk of supervisors of the county for the use of the county board of equalizers.

SECTION 24. It shall be the duty of the assessors of such Assessors to meet and form county town or ward, when there are more than one assessor, to designate

board of equalization.

one of their number, and of the assessors of each town or ward, when there is but one assessor, to meet at the usual place of holding the annual meeting of the county board of supervisors in his county, on the third Monday of September in each year, at twelve o'clock, M., for the purpose of equalizing the valuation of the real property between the several towns and wards of the county. When so met, said assessors shall form a county board of equalization and shall choose one of their number moderator, and the clerk of the county board of supervisors shall be the clerk of said board. Said board shall equalize the valuation of real estate in the several towns and wards in their county, according to the provisions of chapter fifteen (*eighteen*) of the revised statutes, pertaining to the equalization of assessments by the county board of supervisors.

Clerk of county board to transmit to secretary of state an abstract; what it must set forth.

SECTION 25. Each clerk of the board of supervisors shall, on or before the second Monday of October, annually, make out and transmit to the secretary of state an abstract of all real property of each town, city, and village of his county, in which he shall set forth:—

1. The number of acres, inclusive of village lots.

2. The aggregate value of all such real property, other than village and city lots, as returned by the several assessors of his county, including all additions which shall have been made thereto, agreeably to the provisions of this act.

3. The aggregate valuation of real property of each village and city of his county, as returned by the assessors, including such additions as shall have been made thereto; and each of the said clerks shall at the same time transmit to the said secretary of state, the aggregate value of all the personal property in his county, including such additions as shall have been made thereto, in accordance with the provisions and requirements of this act.

Senate shall form state board of equalization.

SECTION 26. The members of the state senate, in conjunction with the secretary of state, shall form a state board of equalization, and the state board thus constituted shall perform the duties devolving upon them as such state board of equalization, at such time during the annual session of the legislature, as a majority of such board may determine. And each having taken an oath, honestly and impartially, to the best of his knowledge and ability, so far as the duty devolves upon him, to equalize the valuation of real property among the several counties, towns, cities, and villages of the state, according to the rules prescribed by this act for valuing and equalizing the value of real property, the secretary of state shall lay before the board the abstracts of real property transmitted to him from the several counties, and the said board shall proceed to equalize the valuation of such real property, in the manner following, to wit:—

Manner of proceeding in making equalization.

1. They shall add to the aggregate valuation of every county which they believe to be valued below the average valuation of other counties, such *per centum* as will raise the same to the average valuation of all the counties of the state, according to the actual value of each as compared with other counties.

2. They shall deduct from the aggregate valuation of every

county which they believed to be valued above the average valuation of other counties, such *per centum*, in each case, as will reduce the same to the average valuation of all the counties of the state, according to the actual value of each as compared with other counties.

SECTION 27. It shall be the duty of the secretary of state, Secretary of state to transmit to clerks of county board, statement of equalization, &c.; duty of thereon. immediately after the state board of equalization shall have completed their labors, to transmit to the clerk of the board of supervisors of each county of the state, a statement of the *per centum* to be added to or deducted from the real property of his county, and the said clerk shall forthwith proceed to add to or deduct from each parcel of real property in his county, the required *per centum* on the valuation thereof, as the same shall stand after having been equalized by the county board of equalization; and the valuation of real property as it shall stand after having been thus equalized by the state board, shall form the basis on which taxes shall be levied.

SECTION 28. When the secretary of state shall have ascertained the aggregate valuation of all the taxable property of the state, he shall proceed to apportion the state taxes among the several counties, so that each county shall pay such proportion of said state taxes as the aggregate valuation of all the taxable property of such county bears to the aggregate valuation of all the taxable property of the state. And the secretary of state shall transmit a copy of such apportionment, duly certified, to the clerk of the board of supervisors of each county of the state, on or before the first day of October, annually. Secretary of state to ascertain and apportion state taxes, &c.

SECTION 29. The present state board of equalization shall equalize and apportion the taxes among the several counties for the present year, in manner now provided by law, and shall base such equalization and apportionment upon the returns last made to them by the several counties. Present state board to act present year.

SECTION 30. In order that the provisions of this law may be made to apply to the present year, the time for the annual assessment for the year eighteen hundred and fifty-eight, is hereby extended for not exceeding forty days from and after the time now fixed by law: *provided*, that after the year eighteen hundred and fifty-eight the time for such annual assessment shall be the same as now provided in the revised statutes. Time for assessment extended for present year.

SECTION 31. All acts or parts of acts superseded by or conflicting with the provisions of this act are hereby repealed. Acts contravening this act repealed.

Approved May 17th, 1858.

### *Chapter 3, Acts of a general nature of 1858.*

SECTION 1. Section three of an act to authorize the extension of time for the collection of taxes in certain cases, (*section sixty-seven of chapter eighteen*,) is hereby amended to read as follows: Section sixty-seven of chapter eighteen amended. The collector of taxes shall have the same power and authority to proceed in the collection of all state, county, school, and other taxes contained in such town or city tax roll, after as before such extension of time for the collection of said taxes; and the return of any such collector of taxes to the county treasurer within the

time limited and specified by said board of town supervisors, or to [by] the common council, in their order extending the time for the collection of taxes, shall be as valid and effectual as if made pursuant to the direction of the original warrant.

Approved January 29th, 1858.

*Chapter 72, Acts of a general nature of 1858.*

When town clerk neglects to deliver roll, clerk of county board to make and deliver same to sheriff.

SECTION 1. Whenever the town clerk of any town in this state shall neglect or refuse to calculate or carry out the total amount of state, county, and school taxes in the assessment roll of his town, and deliver a copy of such assessment roll with his warrant thereto annexed for the collection of such taxes, to the town treasurer of his town, as required by any law of this state, it shall be the duty of the clerk of the board of supervisors of the county in which such town shall be situated, and he is hereby authorized and empowered, at any time after such neglect or refusal, to calculate and carry on such taxes in the assessment roll of such town, and to complete such roll and make a true copy thereof, and annex to such copy a warrant signed by him in his official capacity as clerk of such board, which warrant shall be substantially in the form and of the like tenor and effect of the warrant which such town clerk was required by law to make or annex to a copy of such assessment roll, and shall be directed and delivered to the sheriff of said county, together with said copy of the assessment roll, whose duty it shall be to collect and return said taxes according to the command of said warrant, and for that purpose the sheriff of said county is hereby vested with all the powers of the town treasurer of such town.

Clerk to use last year's assessment roll if original cannot be obtained.

SECTION 2. Whenever it shall become the duty of the clerk of the board of supervisors of any county in this state to calculate and carry out the taxes apportioned to any town in such county, as required by section one of this act, and if such clerk shall for any cause be unable to obtain the original assessment roll of such town for the proper year, he shall use a copy thereof for that purpose; if such copy cannot be obtained, he shall make out an assessment roll of such town from the last assessment roll thereof in his office, or in the office of the treasurer of the county, which shall in such case be taken and deemed to be the assessment roll of such town, for all purposes whatever.

Compensation of clerk and sheriff.

SECTION 3. For all services performed by a clerk of the board of supervisors under the provisions of this act, he shall be entitled to a reasonable compensation, to be allowed by the county board of supervisors, and paid out of the county treasury, and charged over to the proper town. The sheriff shall be entitled to the same compensation for services performed under the provisions of this act as are allowed town treasurers for similar services, to be collected and paid in the same manner.

Approved May 4th, 1858.

*Chapter 152, Acts of a general nature of 1858.*

SECTION 1. In case any county in this state shall hereafter fail, neglect, or refuse, for the space of thirty days after the time appointed by law for the payment of state taxes due from any county to the state, to pay such taxes at the time and place the same are required by law to be paid, then the state treasurer shall charge interest against said county on the whole amount of such taxes due from any such delinquent county, from the time such delinquency occurs until the payment of such taxes, at the rate of twenty-five *per centum per annum*, until the whole sum of unpaid taxes shall be paid by such delinquent county to the state, as required by law; and if at the time of the payment of the taxes by such county, the interest is not paid in full by such county, then the interest money so accrued shall be added to the ensuing amount of state taxes to be raised and paid to the state by such delinquent county: *provided*, that no interest shall be charged on any taxes now due from any county in this state until after the first day of July, A. D. 1858.

If county neglects, &c., to pay state tax, twenty-five per cent. to be charged, &c.

SECTION 2. It shall be the duty of the secretary of state, at the time he notifies the clerks of the boards of supervisors of the several counties in this state of the amount of state tax assessed against their respective counties, as provided in chapter seventy-three of the general laws of the year 1854, (*section forty-six of chapter eighteen of the revised statutes*), to add to such amount twenty-five *per centum* on the amount of state tax which may be due from any of such counties to this state; and said twenty-five *per centum* shall be levied and collected in said counties as a part of the state tax, and paid into the state treasury as state taxes are now required by law to be paid.

Secretary of state to add interest, &c., to state tax, to be collected as other taxes.

SECTION 3. Each county treasurer in this state, at the time required by law for the payment of state taxes, in case he does not pay in the full amount due from his county, shall file with the state treasurer an oath or affirmation that he has returned and paid into the state treasury the whole amount of state taxes which has come into his hands, stating particularly the amount received from each town and city; and if any county treasurer shall be guilty of false swearing, in taking such oath or affirmation, he shall be adjudged guilty of perjury, and upon conviction thereof, shall be punished as now provided by law in other cases of willful and corrupt perjury. If such county treasurer shall fail to make and file such oath or affirmation as herein provided, and pay into the state treasury the whole amount of state taxes which shall have come into his hands, he shall, in addition to other penalties now provided by law, be subject to a penalty of one thousand dollars, which shall be collected on the official bond of such treasurer.

County treasurer to file oath, &c.

Punishment for false swearing, or neglecting to file oath, &c.

SECTION 4. If any town treasurer in this state shall fail to pay over to the county treasurer the amount of state tax due from his town, collected by him as required by the warrant authorizing the collection of such taxes, he shall, in addition to all other penalties, be liable to a fine of five hundred dollars, to be collected on his official bond.

Penalty for failure to pay amount collected.

County indebted  
to draw no  
money.

SECTION 5. No county in this state shall draw any money from the state treasury, while such county is indebted to the state for state tax.

Approved May 17th, 1858.

*Chapter 82, Acts of a general nature of 1858.*

In case of non-  
payment of tax-  
es, county treas-  
urer to certify  
lists to state  
treasurer.

SECTION 1. If the taxes on any state, school, and university lands in any county in this state, shall not be paid on or before the time established by existing laws for the sale of lands for delinquent taxes in such county, the county treasurer shall immediately forward certified lists of such lands on which the taxes remain unpaid, to the state treasurer.

State treasurer to  
add twenty-five  
per cent. to  
taxes.

SECTION 2. The state treasurer, before charging such returned taxes against the lands to which they belong, shall add thereto twenty-five per cent., which twenty-five per cent. shall be collected with other charges against said lands, and when collected shall be added to the principal of the school fund.

Approved May 11th, 1858.

## CHAPTER XIX.

### OF HIGHWAYS AND BRIDGES.

R. S. 1858.  
CHAP. 19.  
p. 251.

#### OF THE OFFICERS ENTRUSTED WITH THE CARE AND SUPER- INTENDENCE OF HIGHWAYS AND BRIDGES, AND THEIR GENERAL POWERS AND DUTIES.

Town super-  
visors to be com-  
missioners of  
highways, and  
their duties as  
such.

SECTION 1. The supervisors of the several towns in this state shall, by virtue of their office, be the commissioners of highways in their respective towns, and shall have the care and superintendence of the highways and bridges therein;<sup>1</sup> and it shall be their duty:—

1. To give directions for the repairing of the roads and bridges within their respective towns.

2. To regulate the roads already laid out, and to alter such of them as they shall deem inconvenient.<sup>2</sup>

3. To cause such of the roads used as highways as have been

(1) Commissioners of highways cannot, by virtue of their office, bring suits to recover damages against individuals or corporations, for illegally entering upon and taking possession of the public highways or bridges of their town. Neither have the electors of a town, at town meeting, power by resolution or otherwise, to authorize such commissioners to bring an action in their own names, or in their name of office, for such injuries. Such a resolution, if passed at town meeting, would not bind the town.

In the case cited, the electors of a town at town meeting directed the commissioners of highways to prosecute a turnpike company for entering upon and taking possession of a public highway and bridge in that town, and the commissioners accordingly brought a suit for the cause of action in their names as commissioners, and had judgment against them. *Held*, that they could not sustain an action against the town to be reimbursed their costs and expenses, or the costs recovered against them in that suit.

The electors of a town cannot bind the town, except in manner prescribed by law.—[*Cornell v. Guilford*, 1 Den., 510.]

(2) A town cannot by vote, authorize or compel the commissioners of highways to lay out, alter, or discontinue a particular town way or public road; their duty being expressly pointed out by law, and they can only act in obedience to its provisions.—[*Keen v. Stetson*, 5 Pick., 492. For duty of commissioners in this respect, see section 53 of this chapter.]

laid out, but not sufficiently described, and such as have been lawfully laid out and used as such, up to the present time, but not fully and sufficiently recorded, to be ascertained, described, and entered of record, in the town clerk's office.<sup>1</sup>

4. To cause bridges, which are or may be erected over streams intersecting highways, to be kept in repair.<sup>2</sup>

5. To divide their respective towns into so many road districts as they shall judge convenient, and specify every such division in writing, under their hands, to be recorded in the office of the town clerk, in a book kept for that purpose; but no such division shall be made within ten days next preceding the annual town meeting.<sup>3</sup>

6. To assign to each of the said road districts such of the inhabitants liable to pay tax on highways, as they shall think proper, having regard to the nearness of residence as much as practicable.

<sup>1</sup> Form of order ascertaining a road not sufficiently described.

Wood county.  
Town of Grand Rapids. } ss.

Whereas, a road leading from \_\_\_\_\_ to \_\_\_\_\_ in said town, now used as a highway, was laid out by the supervisors of said town, [or other authority, as the case may be,] on the \_\_\_\_\_ day of \_\_\_\_\_, 18—, but not sufficiently described, [or not fully and sufficiently recorded.]

Now, therefore, we, the undersigned supervisors of said town, do order that said road be ascertained, described, and entered of record in the clerk's office of said town, according to a survey which has been made under our direction, as follows: [here insert the survey.] And we do further order the line described in said survey to be the centre of the road used, that the said road be of the width of \_\_\_\_\_ rods.

Given under our hands, at Grand Rapids, this \_\_\_\_\_ day of \_\_\_\_\_, 18—.

A. B. SAMPSON, }  
GEO. S. BROWN, } supervisors.  
T. B. SCOTT, }

(2) It seems that where a bridge is built by an individual over a natural stream, for his own benefit, if the bridge be of public utility and is used by the public, they are bound to keep it in repair; but not so when the necessity for the bridge is created by the individual.—[*Dyggert v. Schenck*, 23 Wen., 446.]

Commissioners of highways are not bound to build or repair bridges when not in funds to defray the expense.—[7 Wen., 474.]

An indictment against commissioners of highways is defective unless it aver that the defendants had funds or other means to defray the expenses.—[2 Hill, 619.]

At common law, the counties, and not towns, were liable to build and repair the necessary bridges, and the remedy for neglect was by indictment.—[17 Johns., 452.]

<sup>3</sup> Form of order dividing town into road districts.

Green county.  
Town of Jefferson. } ss.

We, the undersigned supervisors of said town, do hereby order, that said town be and it is hereby divided into \_\_\_\_\_ road districts, as follows:—

Road district number one shall include [here insert the land constituting the district.] And all the inhabitants liable to work on highways, residing therein, shall be and are hereby assigned to work on said district number one. [And if any inhabitants residing out of the district, be assigned to work therein, insert as follows:] And the following inhabitants, residing out of said district, are assigned to work within the same, to wit: A. B. and C. D., residing, &c., [state their residences as near as may be.]

Road district number two shall include, &c., [describe each particular district as above.]

Given under our hands, at Jefferson, this \_\_\_\_\_ day of \_\_\_\_\_, 18—.

ISAAC TREMBLY, }  
LEWIS GASSIN, } supervisors.  
R. D. STEPHENS, }



7. To require the overseers of highways, from time to time, and as often as they shall deem necessary, to perform any of the duties required of them by law.

8. To assess the highway taxes in their respective towns, in each year, as provided by law.<sup>1</sup>

Their power to lay out and discontinue roads.

SECTION 2. The supervisors shall have power, in the manner and under the restrictions hereinafter provided, to lay out and establish, upon actual survey, such new roads, in their respective towns, as they may deem necessary and proper; and to discontinue such old roads as shall appear to them to have become unnecessary.

To make annual report to board of auditors.

SECTION 3. The supervisors of each town shall render to the board of auditors authorized by law to settle their accounts, at the annual meeting of such board, in each year, a statement in writing, containing:—<sup>2</sup>

1. The amount of highway taxes assessed, and the amount which has been collected, in their town.

2. The amount of tax collected in money, and the amount paid in labor.

3. The manner in which any moneys, raised by the town for the improvement or building of roads or bridges therein, have been disbursed, and the particular items of such disbursements: and—

4. An estimate of the sum necessary to be raised by the town for the improvement of roads and bridges therein for the ensuing year, specifying the improvements required.

Auditors to present same to town meeting, and meeting may vote to raise money for roads and bridges.

SECTION 4. The said board of auditors shall cause such statement to be presented at the then next annual town meeting, and such meeting may vote for the raising of such sum, for the improvement of the roads and bridges within the town, as a majority of the electors present shall deem necessary; and the sum so voted

(1) A town has no authority, however, to raise money to aid in the construction of a road which by law is to be made at the expense of the county; and consequently a tax laid by the town for the purpose of collecting the money, is illegal and void. So held in Massachusetts.—[*Pearson v. Gashen*, 71 Pick., 396.]

<sup>2</sup> Form of annual statement of supervisors, to be rendered to town auditors.

To the board of auditors of the town of *Columbus*, in the county of *Columbia*.

The undersigned supervisors of said town, do render to you the following statement in writing, as required by law:—

1st. The amount of highway taxes assessed in said town, for the year ending the — day of —, 18—, is — dollars, and the amount which has been collected of the same is — dollars.

2d. The amount of the same collected in money was — dollars. The balance was paid in labor.

3d. The money raised by the said town for the improvement of roads and bridges has been disbursed as follows, to wit:—to *Mr. G. H.*, for building causeway, \$10; to *E. F.*, for building and finishing a bridge across — creek, \$100; &c., [give the various items.]

4th. The sum necessary to be raised by the town for the improvement of roads therein, [or improvement of roads and building of bridges, as the case may be,] for the ensuing year, we do estimate at — dollars; the following improvements being required, [specify the improvements required.]

Given under our hands, at *Columbus*, this — day of —, 18—.

G. H. WARNER,  
M. G. ST. JOHN,  
WM. A. COLEMAN, } supervisors.

shall be levied and collected in the same manner as other town taxes.

SECTION 5. It shall be the duty of the overseers of highways:— Duties of overseers of highways.

1. To repair and keep in order the highways within the several districts for which they shall have been elected or appointed respectively.

2. To notify all persons assessed to pay highway taxes, of the time when and place where labor will be received in payment for such taxes.

3. To collect all highway taxes, as required by law, and to execute all lawful orders of the supervisors.<sup>1</sup>

SECTION 6. Whenever the amount of highway tax, assessed by the supervisors in any district, shall be deemed insufficient to keep the roads therein in repair, the overseer of such highways may, upon an application in writing, signed by a majority of the inhabitants liable to pay highway taxes in such district, make another assessment on the taxable property in said district, in the same proportion, and not exceeding one-third of the amount assessed in the same year by the supervisors, on the inhabitants of the district; and the taxes so assessed by an overseer shall be collected and expended in like manner as highway taxes assessed by the supervisors are required to be collected and expended.<sup>2</sup> Overseers upon application may make another assessment.

SECTION 7. It shall be the duty of the chairman of the supervisors of each town in this state, to cause to be erected at the intersection of all main traveled roads within his town with other legally laid out roads, suitable and intelligible post guides, or guide boards, giving direction and distance from the point of such intersection to adjoining or important towns, the expense to be paid from the treasury of the town. Chairman of supervisors to cause guide boards to be erected. S. L. 1856, ch. 32.

SECTION 8. Any chairman of supervisors who shall neglect the duty required by the preceding section, shall forfeit and pay for each month's neglect of such duty, and for each instance of such neglect, for the time aforesaid, a fine of five dollars, to be recovered Penalty for neglect. Id.

(1) An overseer of highways is bound to remove obstructions from the highways within his district, although not specially directed to do so by the commissioners.—[*McFadden v. Kingsbury*, 11 Wen., 667.]

Labor assessed for highway purposes can only be bestowed upon such roads or highways as are established by law. When lands are dedicated by the owner to public use as streets, they do not become public highways until accepted as such by the public authorities.—[*Oswego v. Oswego Canal Co.*, 2 Selden, 268.] Towns under the laws of Wisconsin, and in other states under similar laws, could probably only accept of such dedication by the action of the supervisors or commissioners of highways, upon proper application, as in other cases of creating roads or highways.

<sup>2</sup> Form of application to overseer of highways for another assessment.

To B. D. Maynard, overseer of highways of district number one, in the town of Perry, in the county of Pierce.

The undersigned, a majority of the inhabitants liable to pay highway taxes in said road district, would represent that the amount of highway taxes assessed in said district by the board of supervisors of said town, is insufficient to keep the roads therein in proper repair, and would request that an additional tax be assessed upon the taxable property in said district, in the same proportion of the old tax, not exceeding ——— of the amount of the tax assessed by the supervisors aforesaid.

Dated this ——— day of ———, 18—.

before any justice of the peace of the county, on complaint of any person of lawful age who shall prefer such complaint, one-half of said fine to go to the complainant, and the remaining half to the school fund; and the officer who shall be adjudged to pay any fine as provided in this section, shall also be adjudged to pay the costs of prosecution.

Duty to keep same in repair.  
S. L. 1866, ch. 32.

SECTION 9. It shall be the duty of the chairman as aforesaid, to keep in repair all guide boards erected as provided in section seven of this chapter, subject to the same penalty for neglect of duty, as provided in the next preceding section; the costs of such repairs shall be paid by the town.

Penalty for defacing, &c., guide board.  
Id.

SECTION 10. If any person shall deface, injure, or destroy any guide post or guide board erected in any town in this state, and shall neglect for the space of ten days thereafter to repair and restore the same to as perfect condition as it was previous to such defacing, injuring, or destroying, such person shall be adjudged, on complaint of any person, to pay damages to three times the cost of repairing such guide boards aforesaid, together with costs of prosecution; such damages to be recovered before any justice of the county.

Duty of supervisor to prosecute such offense.  
Id.

SECTION 11. It shall be the especial duty of any town supervisor who has knowledge that any offense mentioned in section ten has been committed within his town, to make diligent effort for the detection of the person by whom such offense was committed, and to prosecute for and collect the damages for the use of the town.

Scraper and plow to be procured by overseer.

SECTION 12. Any overseer of highways may, if he shall deem it necessary, procure a good and sufficient scraper and plow, or either of them, for the use of his road district, and pay for the same out of the highway taxes by him collected.

Overseer to be paid for excess of his labor over his taxes, but not allowed to commute.

SECTION 13. If any overseer shall be employed more time in executing the several duties enjoined upon him in this chapter than shall be necessary for the payment of his highway tax, he shall be paid for the excess at the rate of one dollar per day, and be allowed to retain the same out of the moneys that may come into his hands, on account of highway taxes; but he shall not be allowed to pay his own highway tax in money.

Overseer may enter upon adjoining lands and cut ditches, and upon unimproved lands and dig gravel, &c.

SECTION 14.<sup>1</sup> It shall be lawful for any overseer of highways, or any person acting under his directions, to enter upon any lands adjoining to or near the highway in his district, to construct such drains or ditches as may be necessary for the improvement or preservation of such highways; and any such overseer, or the persons as aforesaid, may enter upon any unimproved lands adjoining to or near the highway in his district, and gather or dig any stones, gravel, or sand, and cut any wood or trees, and take away the same, for the purpose of making or improving such highway; but any

(1) The power given to overseers of highways by this section of the statute does not authorize them to take and appropriate to public use any timber or other material which the owner has prepared for his own use. He may enter upon any unimproved lands adjoining to or near the highway in his district. He may gather or dig any stones, gravel, or sand, but he cannot take such as has been already gathered or dug; and he may cut any wood or trees, and take them away, but he cannot take away any which has been already cut and hewed, or prepared by the owner for some particular purpose.—[Goodman & Stephens v. Bradley, 2 Wis. R., 257.]

overseer, or other person, so entering upon such lands, shall carefully avoid doing any unnecessary injury upon the same.

SECTION 15. If any owner or occupant of lands, so entered upon, for any of the purposes mentioned in the preceding section, shall feel himself aggrieved, he may apply to the supervisors of the town, who shall appoint three disinterested electors of such town to appraise the damages;<sup>1</sup> and such electors being first duly sworn, justly and impartially to appraise the damages done upon such lands, shall proceed to estimate the same; and the damages, if any, allowed by them, shall be certified under their hands, and the same shall be audited by the town board, and paid out of the town treasury; said appraisers shall take into consideration the advantages as well as the damages done to said lands by reason of any improvement made on said road by such materials so taken.<sup>2</sup>

If owner or occupant aggrieved, may have damages appraised.

SECTION 16. Whenever any highway shall become impassable, by reason of any casual interruption from the falling of timber, the destruction of any bridge, or the washing away or injury of any part of such highway, it shall be the duty of the overseer of said highway to cause such highway to be put in passable repair as soon as practicable.

Road impassable immediately to be repaired.

SECTION 17. If any person, for the purpose of putting such highway in repair, shall expend in labor, material, or money, an amount greater than he is assessed to pay on the highway in such year, such person shall be entitled to receive from the overseer of such district a certificate for the amount of such expenditure above his highway tax, which shall be a good credit, and shall be allowed

Person in such case expending more than his assessment, to be credited therefor on subsequent tax.

<sup>1</sup> Form of appointment by supervisors of three disinterested electors to appraise damages.

To Franklin E. Palmer, Thomas Chapman, and Leonard Coates, of the town of Plattville in the county of Grant.

You are hereby appointed as disinterested electors of said town to appraise the damages claimed by Samuel Mitchell for trees cut upon his land and taken away by the overseer of highways of district No. — in said town, for the purpose of improving the highway.

Dated at Plattville this — day of —, 18—.

SAMUEL MOORE, }  
JOHN STEPHENS, } supervisors.  
S. O. PAINE, }

<sup>2</sup> Form of certificate of electors appointed to appraise damages.

Grant county. }  
Town of Plattville. } ss.

The undersigned, being appointed by the supervisors as three disinterested electors of said town to appraise the damages claimed by Samuel Mitchell for trees cut upon his land, and taken away, by the overseer of highways of district No. —, for the purpose of improving the highway, do hereby certify that after being first duly sworn according to law, we did proceed to estimate said damages, and have estimated the same at — dollars.

Witness our hands at Plattville, this — day of —, 18—.

FRANKLIN E. PALMER.  
THOMAS CHAPMAN.  
LEONARD COATES.

to the holder thereof, on account of any subsequent highway tax assessed in said district.<sup>1</sup>

Supervisors may appoint overseer in case of vacancy.

SECTION 18. If any person chosen to the office of overseer of highways shall refuse to serve, or if his office shall become vacant, the supervisors shall, by warrant, under their hands, appoint some other person in his stead; and the overseer so appointed shall have the same powers, perform the same duties, and be liable to the same penalties, as overseers chosen at town meetings.<sup>2</sup>

Appointment to be filed and notice given.

SECTION 19. The supervisors making such appointment shall cause such warrant to be forthwith filed in the office of the town clerk, and such clerk shall immediately give notice to the person so appointed.<sup>3</sup>

Penalty on overseer for neglect of duty.

SECTION 20. Every overseer of highways who shall refuse or neglect to perform any of the duties required of him by law, or which may be lawfully enjoined upon him by the supervisors of his town, and for the omission of which a penalty is not hereinafter provided, shall, for any such neglect or refusal, forfeit the sum of ten dollars.<sup>4</sup>

Duty of supervisor to prosecute

SECTION 21. It shall be the duty of the supervisors of each town, whenever any overseer of highways of such town has refused

<sup>1</sup> Form of certificate of overseer for amount expended above highway tax.

I, E. S. Miner, overseer of highways for road district No. — in the town of Necedah, in the county of Juneau, do certify that John T. Kingston, assessed to pay highway labor in said district for the year 18—, has expended in labor and material [or as the case may be] in rebuilding the bridge over Yellow river at —, twenty-five dollars above his highway tax.

Dated, Necedah, —, 18—.

E. S. MINER, overseer of highways.

<sup>2</sup> Form of appointment of overseer of highways by supervisors.

Crawford county. } ss.  
Town of Clayton. }

Whereas Hiram Coleman, chosen to the office of overseer of highways for road district No. — in said town, has refused to serve, [or, the office of &c. has become vacant.] Now therefore, we the undersigned, supervisors of said town, do hereby appoint Joseph Evans as overseer of highways of said district No. — instead of the said Hiram Coleman.

Given under our hands at Clayton, this — day of —, 18—.

PETER HOFFMAN, } supervisors.  
DAVID SMITH, }  
DENNIS BELL. }

<sup>3</sup> Form of notice by town clerk, to person appointed overseer of highways.  
To Joseph Evans.

Sir: it appears from a warrant under the hands of the supervisors, this day filed in my office, that you have been appointed by them, overseer of highways for road district No. — in the town of Clayton and county of Crawford, instead of Hiram Coleman; who has refused to serve, [or as the case may be.] You are therefore hereby notified of your appointment as such overseer.

Dated at Clayton, this — day of —, 18—.

G. MORGAN, town clerk.

(4) An overseer of highways is not liable in a private action for any error of judgment in the execution of his trust. He is only responsible for any neglect or refusal under the section of the act which subjects him in such case to a penalty.—[Freeman v. Cornwell, 10 Johns., 470.]

If, however, he acts maliciously or oppressively, it is otherwise.—[5 Johns., 125.]

or neglected to perform any of the duties required of him by law, <sup>overseer for penalty.</sup> forthwith to prosecute such overseer for the recovery of such penalty.

OF PERSONS LIABLE TO WORK ON HIGHWAYS, AND MAKING  
ASSESSMENTS THEREFOR.

SECTION 22. The supervisors in each town shall meet within <sup>Supervisors to meet annually to assess highway tax.</sup> eighteen days after the annual town meeting, at such time and place in the town as they may agree upon, and proceed, then, or at a subsequent meeting, to assess the highway tax in their town for the ensuing year, but the supervisors shall not extend the time for assessing such highway tax beyond the second Monday in May in any year.

SECTION 23. Each overseer of highways shall, within sixteen days after his election or appointment, deliver to the town clerk a list, subscribed by him, of the names of all the inhabitants of his road district, who are liable to pay taxes on the highways; and the town clerk shall deliver all such lists received by him to the supervisors.<sup>1</sup> <sup>Overseers to deliver list of inhabitants liable to pay road taxes to town clerk, and clerk to supervisors.</sup> If the overseer shall neglect or refuse to deliver such list to the town clerk as aforesaid, the supervisors shall have power to issue a warrant under their hands, directed to any constable in the town, requiring him forthwith to bring such overseer before them to show cause why said list has not been filed with the town clerk according to law; the constable's fees for such service shall be paid by said delinquent overseer.<sup>2</sup> <sup>Penalty for neglect.</sup>

SECTION 24. The supervisors in each town shall make out <sup>Supervisors to make out lists</sup> separate lists of the names of all persons liable to pay highway

<sup>1</sup> Form of list of names of inhabitants liable to pay taxes on highways.

Town of Perry, ss.

The following is a list of the names of all the inhabitants of my road district, being district No. one of said town of Perry, in the county of Pierce, who are liable to pay taxes on the highways, to wit:—

Jonathan Russ,	Wilson Kinney,
John L. Hamilton,	E. W. Bruce,
&c.,	&c.

Which I certify to be correct.

Dated this — day of —, 18—.

B. D. MATNARD, overseer of highways of district No. 1.

<sup>2</sup> Form of warrant by supervisors when overseer neglects or refuses to deliver list.

Wahworth county.

Town of Wahworth. } ss:—To any constable in said town.

Whereas, O. P., overseer of highways of road district number —, of said town, has neglected [or refused] for over sixteen days after his election, to deliver to the town clerk of said town, a list subscribed by him, of the names of all the inhabitants of his road district who are liable to pay taxes on the highways.

Now, therefore, in the name of the state of Wisconsin, you are hereby required forthwith to bring the said O. P. before the undersigned supervisors of said town, to show cause why said list has not been filed with the town clerk of said town, according to law. And of this warrant make due return.

Given under our hands at —, this — day of —, 18—.

ETHAN GILBERT,	} supervisors.
BEARDSLEY LAKE,	
GEORGE GREEN,	

of names of persons, and statement of property liable for road taxes.

taxes in each road district in such town, which lists shall also contain a statement of all the taxable personal property, and a description of all lots or parcels of land, within each such district, with the value of each lot or parcel set opposite to such description, as the same shall appear on the assessment roll; and if such lot or tract was not separately described in such roll, then in proportion to the valuation which shall have been affixed to the whole tract of which such lot or parcel forms a part.<sup>1</sup>

How to proceed in making assessment.

SECTION 25. In making an assessment of highway taxes, the supervisors shall proceed as follows:—

S. L. 1856, ch. 90.

1. Every male inhabitant in each road district, being over the age of twenty-one years, and under the age of fifty years, excepting persons of color, paupers, idiots, and lunatics, shall be assessed to pay a poll tax of one dollar; said tax may be paid to the overseer in cash, or be commuted for in labor, as now provided for by law.

S. L. 1852, ch. 74.

2. The residue of the highway tax, to an amount of not less than three or more than seven mills on the dollar, shall be assessed on the valuation of the real and personal property in each district: *provided*, that the supervisors of the several towns in the counties of Dodge, Washington, Ozaukee, Sheboygan, and Manitowoc, shall assess any amount of highway tax, additional to the amount authorized to be assessed, ordered to be assessed at the annual town meeting, not exceeding fifteen mills, nor less than three, on the dollar, of the valuation aforesaid.

Town clerk to make duplicate lists; one to be filed, &c.  
1 Wis., 886.

3. The supervisors shall set opposite to each person and corporation, and to each description of taxable property, the amount of tax charged to each respectively.

SECTION 26. The town clerk shall, under the direction of the supervisors, make duplicates of the several lists, which shall be subscribed by them, one of which lists, for each road district, shall be filed by such clerk in his office, and the other shall be delivered

<sup>1</sup> Form of list of the assessment of highway taxes.

Winnebago county. } ss.  
Town of Utica.

At a meeting of the supervisors of said town of *Utica*, held therein on the — day of —, A. D. 18—, the said supervisors did proceed to assess the highway tax in their town for the ensuing year, and they have made out the following separate list of the names of all persons liable to pay highway taxes in road district No. — in said town, which list also contains a statement of all the taxable personal property, and a description of all lots or parcels of land within such district, with the true value of each lot or parcel set opposite to such description, as the same appears on the assessment roll.

Names.	Desc. of land.	Val.	P. pro.	Total.	Tax.	Poll tax.	Total.
A. B.	N.W. q. S. 10.	\$600	\$100	\$700	\$4.90	\$1.00	\$5.90
Unk'n.	S.W. q. S. 12.	500		500	3.50		3.50

GEORGE MILLER, }  
HENRY KNAPP, } supervisors.  
E. B. THRALL, }

[Annex the warrant required by section 27.]

to the overseer of highways of the district in which the highway labor therein specified is assessed.<sup>1</sup>

SECTION 27. The supervisors shall annex to each such tax list a warrant, signed by them, which shall be in substance in the following form:—

"To A. B., overseer of road district number —, in the town of —: Tax warrant.  
you are hereby required to collect from the several persons and corporations named in the annexed tax list, and from the owners of the real estate described therein, the taxes set opposite to such persons, corporations, and property, within the time limited by law, and to apply the taxes by you collected, and make due returns, as the law requires.

1 Wis., 386.

Dated the — day of —, 18—.

C. D., }  
E. F., } supervisors."  
G. H., }

SECTION 28. The names of persons left out of any such lists, and who ought to have been included therein, and of new inhabitants who have not in the same year been assessed in some other place for highway taxes, shall be from time to time added to the several lists, and assessed by the overseers on their polls and in proportion to their taxable property, as others are assessed on such lists by the supervisors, to pay taxes on the highways, subject to an appeal to the supervisors. Overseers to add names of persons omitted, &c., to tax list.

SECTION 29. It shall be the duty of the supervisors of each town, to credit such persons as live on private roads, and improve the same, so much upon their assessment, on account of such improvement, as such supervisors may deem necessary to keep such private roads in repair; or they may annex any such private road to some highway district. Persons working on private roads to be credited. Private roads may be annexed.

SECTION 30. Whenever the occupant of any land not owned by him, shall be assessed therefor by the supervisors, they shall distinguish in their assessment list the amount charged upon such land, from the personal tax, if any, of such occupant; but when any such land shall be assessed in the name of the occupant, the owner thereof shall not be assessed, during the same year, to pay a highway tax on account of such land. Personal tax assessed to occupant of land to be distinguished from tax on same land assessed to him, &c.

SECTION 31. Whenever a tenant of any land, for a less term than twenty years, shall be assessed to pay a tax on the highways, on account of such lands, pursuant to the last section, and shall actually pay such tax, he shall be entitled to a deduction from the rent due, or to become due, from him for such lands, equal to the full amount of such tax, or he may recover the same of his landlord, in an action for money paid out for his benefit; unless otherwise provided by agreement between such tenant and his landlord. Tenant may recover highway tax paid on land of landlord.

(1) A copy of a road warrant, for the collection of a road tax, or list of assessment of highway tax, made out and signed by the town clerk, affords no protection to the officer attempting to serve it. Duplicates of such warrants for the respective road districts must be signed by the supervisors, or by some one for them in their presence and by their direction.—*Mericle & Grover v. Mulks*, 1 Wis. R., 386.



**OF THE DUTIES OF OVERSEERS IN REGARD TO THE COLLECTION AND APPLICATION OF HIGHWAY TAXES.**

When two-thirds of highway taxes to be expended.

**SECTION 32.** Every overseer of highways shall cause at least two-thirds of the amount of highway tax assessed in his district to be collected and expended, as the law requires, before the first of July, and the residue by the first day of November, in each year.

Three days' notice to work to be given to residents.

**SECTION 33.** It shall be the duty of every overseer of highways to give at least three days' notice to all persons residing in his district, assessed to pay highway taxes therein, either personal, or in writing left at their usual places of abode, of the time when, and the place where, they may appear and pay their highway taxes in labor, and with what implements.<sup>1</sup>

Persons may work or employ substitute.

**SECTION 34.** All persons assessed to pay highway taxes, in such district, may appear at such times and places therein, and with such teams and implements, as the overseer, in the notice mentioned in the preceding section, may direct, and work in person, or by an able-bodied substitute.

Overseer may require persons to furnish tools, teams, &c.

**SECTION 35.** Every overseer of highways may require, of all persons offering to pay their highway taxes in labor, to furnish a spade, shovel, axe, or hoe; and any person offering to pay such tax in labor, and who is the owner of a team, plow, wagon, or cart, or other implement, useful for working the highways, may be required by such overseer to furnish such team, plow, wagon, or cart, or other implement, if the assessment of such person on such highways be not less than three dollars.

Persons paying highway tax in labor to be credited, &c.

**SECTION 36.** Every person intending to pay any highway tax assessed against him, or any part thereof, in labor, and who shall, upon the notice required to be given by the overseer, appear and work agreeably to the direction of such overseer, shall be credited on his tax one dollar for every day he shall actually work eight hours on such highway, and fifty cents a day for every wagon or plow, and seventy-five cents for each yoke of oxen, and one dollar twenty-five cents for each span of horses, he shall furnish agreeably to the requirements of said overseer.

S. L. 1854, ch. 44.

On neglect of person to work as required, not afterward entitled to pay in work.

**SECTION 37.** If any person, assessed to pay a highway tax, shall neglect to appear and work on the highway at the time and place specified in the notice required to be given by the overseer, unless satisfactory cause shall appear to such overseer, for such neglect, such person shall not thereafter be entitled to pay his highway tax, assessed for that year, or any part thereof, in labor.

<sup>1</sup> Form of notice to work on highway.

To John W. Fisher, residing in the road district No. —, in the town of West Point, in the county of Columbia.

You are hereby notified, that you may on the — day of —, 18—, on the highway leading from — to —, and near the house of W. L. Austin, in said town, appear and pay your highway taxes for the year 18—, in labor; you are required to appear with a team of oxen and plow; your assessment being three dollars.

Dated this — day of —, 18—.

IRA POLLEY, overseer of highways.

SECTION 38. It shall be the duty of the overseer of highways, <sup>When person</sup> whenever any person shall become liable to pay the highway tax, <sup>liable to pay tax</sup> assessed against him, in money, as prescribed in the preceding <sup>in money, over-</sup> section, to collect such tax; and for that purpose such overseer <sup>seer to collect</sup> shall call at least once on the person taxed, or at the place of his <sup>same.</sup> residence, if in such district, or the town in which such overseer <sup>To call once.</sup> has been chosen, and demand payment of the taxes charged to such person.

SECTION 39. In case such person shall refuse or neglect to <sup>If tax not paid</sup> pay the tax charged against him, such overseer shall levy the same <sup>overseer to levy.</sup> by distress and sale of the goods and chattels of the person who ought to pay the same.

SECTION 40. Such overseer shall give public notice of the <sup>Notice of sale to</sup> time and place of sale, and of the property to be sold, at least <sup>be given.</sup> six days previous to the time of sale, by advertisement to be posted up in at least three public places in the district or town where such sale shall be made; the sale to be by public auction.<sup>1</sup>

SECTION 41. If the property levied upon shall be sold for <sup>Surplus of sale to</sup> more than the amount of tax and costs, the surplus shall be <sup>be returned.</sup> returned to the person from whom the property was taken.

SECTION 42. Every overseer shall be entitled to retain five <sup>Fees of overseer</sup> per cent. for his fees, out of all moneys collected by him on his <sup>on collections.</sup> warrant, and in case of a levy and sale by him of goods and chattels for the payment of any tax, he shall be entitled to collect and receive for the same, such fees as constables are authorized to receive for levying upon and selling goods under execution.

SECTION 43. It shall be lawful for any overseer of highways, <sup>Overseer may de-</sup> for the purpose of collecting any unpaid highway taxes on his <sup>liver tax list to</sup> tax list, against any person or persons who shall have become <sup>constable, who</sup> liable to pay the same in money, to place such tax list in the <sup>may collect same.</sup> hands of any constable of the same town in which such overseer shall have been elected; and such constable shall possess the same powers in the collection of such tax, and be entitled to receive the like compensation, as overseers of highways in like cases.

SECTION 44. Whenever any overseer of highways shall place <sup>Overseer to</sup> his tax list in the hands of a constable for collection, as provided <sup>designate names</sup> in the preceding section, he shall designate the persons named <sup>of delinquents,</sup>

<sup>1</sup> Form of notice of sale of property for non-payment of highway taxes.

#### PUBLIC AUCTION.

Public notice is hereby given, that *John Jones* having refused to pay the highway tax charged against him in the town of *Half Moon* and county of *Eau Claire*, for the year 18—, I have, by virtue of the authority in me vested as overseer of highways, levied upon *[here describe the property]* as the property of the said *John Jones*, which property I shall, on the — day of —, 18—, at the hour of — o'clock, — M., at the house of —, in said town, offer for sale at public auction, to make the amount of said tax in default as aforesaid.

Dated this — day of —, 18—.

DANIEL SHAW, overseer of highways in district No. 4.

and indorse his warrant.

therein from whom taxes are due in money, and he shall indorse over his signature, on such tax list, in substance as follows :—

"I hereby authorize A. B. [naming the constable] to collect the unpaid taxes due in money on the within tax list.

Dated —, 18—.

C. D., overseer.

Duty of constable.

SECTION 45. Every constable who shall receive any such tax list to be collected, shall, to the best of his ability, collect the sums due in money on such tax list from the persons who ought to pay the same; and shall, within thirty days from the date of such indorsement on said tax list, return to the said overseer his doings thereon, and pay over all moneys, so collected, to such overseer; and any overseer, if he shall deem it necessary, may once re-issue such warrant and tax list, in the manner specified in the preceding section, and when so re-issued, the constable shall proceed thereon as herein above provided.

Warrant may be re-issued to constable.

Moneys collected, how to be applied.

SECTION 46. Moneys collected or received by any overseer of highways, on account of highway taxes in his district, shall be faithfully applied and expended by such overseer in the procuring of labor, and in the purchase of implements and materials, as, in the opinion of the said overseer, will most benefit the highways and bridges in his district.

When overseer to make return of lands on which taxes are unpaid.

SECTION 47. Every overseer of highways shall, on or before the first Monday in November in each year, make out and deliver to the town clerk of his town a statement in writing, containing a description of all the real estate taxed in his tax list, upon which the taxes remain unpaid, together with the amount of tax assessed to each such descriptions of land, and the names of the owners thereof, if known; and he shall make and subscribe an affidavit thereon, before some justice of the peace, or other person authorized to administer oaths, that the taxes mentioned in said statement remain unpaid.<sup>1</sup> If the said overseer shall neglect or refuse

<sup>1</sup> *Form of overseer's return to town clerk of unpaid taxes.*

The following is a statement, containing a description of all the real estate in my tax list, as overseer of highways for the road district No. —, in the town of *Pepin*, and county of *Pepin*, for the year 18—, upon which the taxes remain unpaid, together with the amount of tax assessed to each such description of land, and the names of the owners thereof as far as known.

Names of owners.	Description of real estate.	Tax assessed.	Tax unpaid.
<i>Peter B. Granger,</i>	N. W. $\frac{1}{4}$ of Sec. 12.	\$3.50	\$3.50
<i>Wm. Ridgeway,</i>	N. E. $\frac{1}{4}$ of Sec. 12.	3.50	3.50
<i>Unknown,</i>	S. E. $\frac{1}{4}$ of Sec. 12.	3.00	3.00

Dated this — day of —, 18—.

ERASTUS REED, overseer.

*Form of affidavit to be attached to foregoing statement.*

State of Wisconsin. }  
County of *Pepin*. } ss.

*Erastus Reed*, the overseer of highways, whose name is subscribed to the foregoing statement, being duly sworn, says, that the taxes mentioned in the foregoing statement, by him subscribed, remain unpaid.

ERASTUS REED.

Subscribed and sworn to before me, this — day of —, 18—.

JONATHAN S. HOTT, justice of the peace.

to make out and deliver to the town clerk such statement, as afore-<sup>Penalty for neglect.</sup> said, the supervisors, or a majority of them, shall, upon the application of the town clerk, issue a warrant, under their hands, to any constable of the town, commanding him forthwith to bring such overseer before them, to show cause why such statement has not been made as the law requires.<sup>1</sup> The constable's fees for such service shall be paid by such delinquent overseer.

SECTION 48. The town clerk shall, in making out the duplicate assessment roll of the town, next thereafter, enter such unpaid taxes therein, opposite to the description of the land upon which the taxes so remain unpaid; and such taxes shall be collected in the same manner as town taxes are collected, and when so collected shall be paid over as hereinafter provided, for the use of the district in which they were originally assessed. <sup>Town clerk to enter unpaid road taxes on assessment roll, &c.</sup>

SECTION 49. It shall be the duty of each town treasurer, between the fifteenth and thirtieth days of April in each year, to notify the overseer of highways, of every road district in his town which may be entitled to any moneys in the town treasury, accruing from returned highway taxes in such district or from any balance received from a former overseer; and the said treasurer shall pay to the order of the overseer of each road district, all moneys in his hands belonging to such district, for the construction and improvement of roads and bridges therein. <sup>Town treasurer to notify overseer of moneys in treasury, &c.</sup>

SECTION 50. Every overseer of highways shall, on or before the third Monday in March in each year, render to the supervisors of the town an account, in writing, verified by his affidavit subscribed thereon, before some person authorized to administer oaths, containing:—<sup>When overseer to render account, and what to contain.</sup>

<sup>1</sup> Form of warrant by supervisors against overseer for neglect to make statement.

County of Dodge. } ss.  
Town of Horicon. }

To any constable of said town, greeting:—

Whereas, upon application of A. J. Rising, town clerk of said town, it appears that John Jones, overseer of highways for district No. —, in said town, has neglected [or refused] to make out and deliver to said town clerk a statement in writing for the year 18—, containing a description of all the real estate taxed in his tax list, upon which the taxes remain unpaid, as required by law. Now, therefore, in the name of the state of Wisconsin, you are commanded forthwith to bring said John Jones before the undersigned supervisors of said town, to show why such statement has not been made as the law requires.

Given under our hands, this — day of —, 18—.

CHANCY BROWN, }  
JOHN NIVER, } supervisors.  
JONES EATON, }

<sup>2</sup> Form of annual account of overseer of highways.

The annual account of Hiram Spry, overseer of highways, for road district number —, in the town of Bloom, and county of Richland, rendered to the supervisors of said town.

Names of persons assessed to pay highway tax.	Amount of tax collected.	How paid.
D. Morrison, . . .	\$4.50	Cash.
Thomas Stacy, . . .	5.00	Labor.

1. The names of all persons assessed to pay a highway tax in his district.

2. The amount of tax collected from each such person, and from other sources, distinguishing the taxes which have been paid in labor from those which have been paid in money.

3. The amount of money received from the town treasurer, on account of returned taxes on real estate, or paid into the town treasury by a former overseer in such district.

4. The manner in which all taxes collected and received by him have been disbursed, and the particular items of such disbursement.

5. A statement of the highway taxes assessed upon real estate in his district, which remain unpaid.

To pay over  
unexpended  
moneys to town  
treasurer.

SECTION 51. If, upon rendering such account, any moneys shall remain unexpended in the hands of such overseer, he shall immediately pay over the same to the town treasurer.

Town treasurer  
to sue in case of  
neglect.

SECTION 52. If any overseer shall neglect or refuse to pay over any money remaining unexpended in his hands, as required in the preceding section, it shall be the duty of the town treasurer forthwith to sue for the same in his name of office, in an action for money had and received to the use of such treasurer; which money, when collected, shall be applied as provided in the forty-ninth section.

#### OF LAYING OUT, ALTERING, AND DISCONTINUING HIGHWAYS.

Highways may  
be laid out, alter-  
ed, or discontin-  
ued by supervi-  
sors, on applica-

SECTION 53. When any six or more freeholders residing in any town, shall wish to have a highway laid out, altered, or discontinued in such town, they may make application in writing to

The amount of money received from the town treasurer on account of returned taxes on real estate, is \$30.00

The amount received on account of money paid into town treasury by former overseer of said district, is 20.00

The manner in which taxes collected and received, have been disbursed, is as follows, [here set forth the manner and particular items of such disbursement.]

The following is a statement of the highway taxes assessed upon real estate in said district which remain unpaid, the amount unpaid is set opposite to each tract.

On N. E. $\frac{1}{4}$ of Sec. 1, . . . . .	\$4.00
On N. W. $\frac{1}{4}$ of Sec. 1, . . . . .	3.50
On S. W. $\frac{1}{4}$ of Sec. 1, . . . . .	4.00

Total amount unpaid, . . . . . \$11.50

Dated this — day of —, 18—.

HIRAM SPRY, overseer.

*Form of affidavit of overseer, verifying the foregoing account.*

State of Wisconsin. }  
County of Richland. } ss.

Hiram Spry, whose name is subscribed to the foregoing account and statement, by him made, being duly sworn, says, that said account and statement is just and true.

HIRAM SPRY.

Subscribed and sworn to before me, this — day of —, 18—.

NATHAN FORD, justice of the peace.

the supervisors of the town in which they reside, for that purpose, and the said supervisors shall proceed to lay out, alter, or discontinue such highway, if, in their opinion, the public good will thereby be promoted.<sup>1</sup>

tion of six freeholders.

2 Wis., 129.

<sup>1</sup> Form of application to supervisors to lay out a highway.

To the supervisors of the town of *Darien*, in the county of *Walworth*.

The undersigned freeholders, residing in said town of *Darien*, do hereby make application to you to lay out a highway as follows, commencing at, &c., [here describe the route of the proposed road. State the point of commencement, the general course, and point of termination, also the several tracts of land through which the highway is to pass.]

Dated at *Darien*, this — day of —, 18—.

It is no objection to an application that more than the requisite number of persons have signed it; and where six of the number are freeholders, and reside in the town, it will be no objection because others whose names are upon the application are not freeholders, or do not reside in the town.—[See *Carmel v. Judges of Putnam*, 7 Wen., 64.

The supervisors have no authority to proceed and lay out a highway, except upon the application of the requisite number of freeholders of the town, in writing, and an order made by them, establishing a highway without such application, would be void.—[See *Harvington v. People*, 6 Barb., 607.

The applicants for a road designate the general course desired; the commissioners the particular route; and the latter may make such variations as they may think proper, provided the departure is not of such a character as to induce the court to suppose that these officers had wholly disregarded the preliminary proceedings of the application.—[*Hallock v. Woolsey*, 23 Wen., 328.

Where commissioners were appointed by an act of the legislature, to lay out a road on the most direct and eligible route, commencing at or near a certain village, and the road was laid out, commencing at a distance of sixty rods from the village, in a field where there was no road with which the new road could be connected, and the route, instead of being the most direct and eligible, was, as expressed by the court, strikingly injudicious; yet, notwithstanding these facts, the court awarded a peremptory *mandamus* to the commissioners of highways of the town, through which the road was laid, to proceed forthwith to open and work the road, as laid out by the state commissioners.—[*People v. Collins*, 19 Wen., 56.

It was held in this case that the court would not collaterally review the doings of the commissioners, and hold as void the final determination made by them, in the exercise of their discretion or judgment. That the proper way of taking advantage of an error of this kind would be by *certiorari*, or writ of error, if no other mode of appeal is given by statute. Hence, we see the necessity of setting forth in the application the points of commencement and termination of the road, with a degree of certainty that may show clearly the wishes of the applicants, and thereby avoid disputes that may thereafter arise.

It has been held in New York, that where an application is made to commissioners of highways for laying out a road, they may refuse to act, and should do so, unless, in their opinion, the application presented to them is regular and in accordance with the requirements of the law. If they err in their refusal to act, the remedy by *mandamus* is at hand.—[*Warnick v. Orange Co.*, 18 Wen., 432.

In laying out highways, the commissioners before whom the matter is brought, exercise a special and limited jurisdiction, and although it may be presumed till the contrary appear, that they have proceeded legally, yet their acts may be impeached, by showing that they exceeded their powers.—[3 *Hill*, 468.

In order to give the supervisors jurisdiction to lay out a highway, it is necessary that the petition or application presented to them for that purpose should be signed by six freeholders of the town. A petition signed by other than freeholders would be utterly nugatory. It is not sufficient that in the body of the petition, or application, it is stated that the "undersigned are freeholders," &c.; but in order to render the petition competent evidence in a proceeding where the same is called in question, it must be affirmatively shown that it is signed by six freeholders. The *onus probandi* is on the party who seeks to avail himself of the petition and the proceedings under it.—[*Williams v. Holmes et al.*, 2 Wis. R., 129. But it will not be necessary in the first instance to introduce title deeds or documentary evidence of the property qualification of the signers. Peaceable possession under claim of title, is *prima facie* evidence of seisin in fee, which will be proved by parol, and will be sufficient until the contrary appears.—[*Austin v. Allen*, *Supreme Court*, January Term, 1858.

The laying out of highways upon inducements or considerations, other than the public good, is illegal.

Thus, where a road was laid out by selectmen, both because they thought the public good required it, and because G. and F. stated to them, that if they would lay the road, the petitioners would make it without any expense to the town; both of which were taken into consideration by the selectmen in deciding to lay the road,—held by the court, that a laying out upon such inducements would be clearly illegal.—[*Gurnsey v. Edwards*, 6 Porter R., 224.

The laying out of highways partakes of the character of judicial proceedings. It is a judicial act.—[*State v. Richmond*, 6 Porter, 232.

By the laying out of a public highway the public acquire no right to use any trees or timber growing upon the land, for the purpose of building or repairing the road. The only

Not to be laid through orchard, &c., without consent of owner.

SECTION 54. No public or private road shall be laid out through any orchard or garden, without the consent of the owner thereof, if such orchard have been set out two years or more, or if such garden have been cultivated as such two years or more; nor shall any such road be laid out through any buildings, or any fixtures, or erections for the purposes of trade or manufactures, or any yards or enclosures necessary to the use and enjoyment thereof, without the consent of the owner.

When laid without consent of owner, damages to be appraised.

R. A., 1858.

SECTION 55. Whenever any highway shall be laid out through any lands other than those owned by this state, or the United States, without the consent of the owner or owners thereof, the damages sustained by such owner or owners, by reason of the laying out and opening of such highway, shall be ascertained, appraised, and awarded as hereinafter provided.<sup>1</sup>

Notice of application to be made out by supervisors.

SECTION 56. Upon application made to the supervisors for the laying out, altering, or discontinuing any highway, they shall make out a notice, and fix therein a time and place at which they will meet and decide upon such application; and the applicant shall, at least five days previous to such time, cause such notice to be given to all the occupants of the lands through which such highway may pass, which notice shall be served personally, or by copy left with or at the usual place of abode of each occupant of such lands; and such notice shall also be posted up in three public places in said town, at least ten days before the time of such meeting of the supervisors; every such notice shall specify, as near as practicable, the highway proposed to be laid out, altered, or discontinued, and the several tracts of land through which the same may pass.<sup>2</sup>

Applicants to serve and post notices, and what same to contain.

right they acquire in relation to such trees, is that of cutting down and removing to a convenient distance, for the use of the owner, such trees as it is necessary to remove, in order to the making or repair of the road in a proper and reasonable manner.—[*Baker v. Shepard, 4 Porter, 208.*]

A public highway may be created by a long use of land by the public for the purposes of a highway. But the way, to become public, must be used in such a manner as to show that the public accommodation requires the way, and that it is the intention of the owner of the land to dedicate it to the public, for that purpose, and the travel should be confined to the same place.—[*State v. Nudd, 3 Porter, 327.*]

See *Gardiner v. Tisdale, 2 Wis., 153.*

Supervisors have no jurisdiction in the matter of laying out a highway, which is to be wholly within their town, unless under some express provision of law.—[*Griffin's Petition, 7 Foster, 343.*]

(1) Land, the private property of the citizen, cannot be taken for a public highway, without compensation.

Open, uncultivated, and unenclosed lands, owned by an individual, are private property within the meaning of sec. 2 of art. xi. of the constitution of Wisconsin, and cannot be taken for public use without just compensation therefor; and such property is protected by the constitution, although the legislature may have made no provision for ascertaining and paying the damages accruing from the appropriation of such property to public use.—[*Norton v. Peck, 3 Wis. R., 714.*]

Under the revised statutes of 1849, no provision was made, in laying out a highway, for assessment of damages to owners of land, except in case of enclosed, improved, or cultivated lands. In the case above cited, the road in question was not laid out through such lands, and no damages were awarded, as it was probably considered unnecessary. The supreme court held that the damages should be assessed before the highway could be opened and worked, although no provision had been made by the legislature requiring such assessment.

<sup>2</sup> Form of notice by supervisors of meeting to decide upon application for road.

#### HIGHWAY NOTICE.

Application having been, on the — day of —, 18—, made to the undersigned supervisors of the town of *Darien*, in the county of *Walworth*, by six freeholders of said town, for a highway to be laid out [or altered, or discontinued] as follows: [*here describe the highway, as in the petition, with the tracts of land over which it is to pass, as therein described.*] Notice is therefore

SECTION 57. The supervisors, upon being satisfied that the notices required in the preceding section have been duly given, proof of which may be shown by affidavit or otherwise, as they may require, shall proceed to examine personally such highway, and shall hear any reasons that may be offered for or against laying out, altering, or discontinuing the same, and shall decide upon the application as they shall deem proper.<sup>1</sup>

SECTION 58. Whenever the supervisors shall lay out, alter, or discontinue any highway, they shall cause an accurate survey thereof to be made when necessary, and they shall make out a

Upon proof of service of notice, supervisors to proceed, &c.

When supervisors lay out, &c., a highway, to make description

hereby given, that said supervisors will meet on the — day of —, 18—, at — o'clock, — M., at the house of *Gaylord Blair* in said town, to decide upon such application.

H. A. JOHNSON, }  
JOHN DEWOLF, } supervisors.  
G. W. LAMONT, }

Dated at *Darien*, this — day of —, 18—.

NOTE.—A very different form from the foregoing is laid down in the Wisconsin Form Book. The concluding words of the form there given (p. 238, 4th edition) are, "to make an examination and survey of said proposed road;" in the case of *Austin v. Allen*, decided at the January term, 1858, of the supreme court, the form, as given in the Wisconsin Form Book, was held not to be a compliance with the statute, and that such a notice gave no jurisdiction to the supervisors to proceed and lay out the highway. The law requires, as will be seen, that the supervisors shall fix in the notice "a time and place at which they will meet and decide upon such application."

In laying out a highway, due and proper notice to parties interested is essential to the validity of the road.—[*Prichard v. Atkinson*, 3 N. H. Rep. 335.]

But want of proper notice to land owners of the laying out of a highway, does not render the proceedings void, but voidable only; but cannot be avoided by those who have in any way waived their rights in the premises. The proceedings cannot be avoided by strangers. So held in New Hampshire.—[*State v. Richmond*, 6 Porter R., 232.]

But where the selectmen do not acquire jurisdiction to lay out a road, the proceedings are void, and must fail under all circumstances.—[*Gurnsey v. Edwards*, id., 229.]

It would seem, that where notice to occupants or land owners is not given in manner required by law, but such occupants or land owners nevertheless have due notice from any other source of the hearing, &c., or do actually appear, it will be a waiver of the formal notice required by law; and the proceedings will be good as to them.—[*Ibid.*, citing 6 Wm., 564, 565.]

When A., upon the laying out of a highway, was a petitioner for the road, and admitted notice of the hearing, and released the land damages to which he was entitled, and the road was illegally laid out by his inducements, held out by him, and by his approval,—held, that B., who subsequently acquired the title of A. to the premises over which the road was laid, could not take advantage of the illegality of the laying out, and maintain trespass for subverting the soil.—[*Gurnsey v. Edwards*, 6 Porter R., 224.]

The road was held legal as to A. and those claiming under him.

When parties entitled to notice of the time and place of meeting of road commissioners, appear before them, and make no objection at the time to the notices or the service of them, such appearance is a waiver of all right to notice, and consequently, of the right to object to the form or sufficiency of the notices.—[*Guilford's Petition*, 5 Foster R., 124.]

<sup>1</sup> Form of affidavit of service, and posting foregoing notice.

State of Wisconsin. } ss.  
Walworth county. }

*William A. Waterhouse*, an applicant for the highway described in the within [or annexed] notice, being duly sworn, says, that he did, on the — day of —, 18—, personally serve said notice upon *Abijah Jones*, an occupant of [describe the land, also set forth each person served, and tract of land occupied,] being the lands through which such highway is to pass. That he did also, on the — day of —, 18—, post such notice as follows: [set forth the places where such notice was posted,] being three public places in said town.

WILLIAM A. WATERHOUSE.

Subscribed and sworn to, before me, this — day of —, 18—.

CALVIN SEARL, justice of the peace.

NOTE.—This affidavit can be indorsed upon the original notice, or annexed to it. As will be seen, an affidavit is not necessary, unless required by the supervisors; they may accept of proof of a different nature, in their discretion.



and incorporate  
in order, &c.

R. A., 1858.

Order to be filed  
and recorded,  
with award of  
damages, &c.

The order or  
copy to be *prima  
facie* evidence.

Damages may be  
ascertained by  
agreement with  
supervisors.

description of the highway so laid out, altered, or discontinued, and incorporate the same in an order to be signed by them, and shall cause such order to be filed and recorded in the office of the town clerk, who shall note the time of recording the same in the record.<sup>1</sup> Such order, together with the award of damages hereinafter mentioned, shall be made out and filed in the office of the town clerk, within three days after the day fixed for deciding upon the application for laying out, altering, or discontinuing such highway; and in case said supervisors shall fail to file such order and award within the three days aforesaid, they shall be deemed to have decided against such application.

SECTION 59. The order laying out, altering, or discontinuing any highway, or a copy of the record thereof, duly certified by the town clerk, shall be received in all courts and places as competent evidence of the facts therein contained, and shall be *prima facie* evidence of regularity of all the proceedings prior to the making of such order.

SECTION 60. The damages sustained by any person or persons, through whose land any highway shall be laid out or altered, may be ascertained by agreement between the supervisors and such owner or owners; every such agreement shall be reduced to writing, and signed by such owner and the supervisors, and filed in the

<sup>1</sup> Form of order laying out, altering, or discontinuing a highway.

Richland county. }  
Town of Sylvan. } ss.

Whereas, upon the application of six freeholders, residing in said town of Sylvan, for the laying out [or altering, or discontinuing] of a highway hereinafter described, we, the undersigned supervisors of said town, did, on the — day of —, A. D. 18—, meet at the house of *Asahel Savage*, in said town, for the purpose of then and there deciding upon such application, it being the time and place fixed by us for that purpose; did proceed to examine personally such highway; and having then and there heard such reasons as were offered for and against laying out [or altering, or discontinuing] the same, did then and there decide upon such application, and determine to lay out [or alter, or discontinue] said highway, as hereinafter described; having, as required by law, first made out a notice and fixed therein a time and place at which we would meet and decide upon such application, and the applicant for such highway having, five days previous to our said meeting, caused such notice to be duly given to all the occupants of the lands through which said highway passes, and such notice having, also, been posted up in three public places in said town, ten days before the time of our said meeting:—it is ordered and determined, and we do hereby order and determine, that a highway be and the same is hereby laid out [or that said highway being described as follows, to wit, is hereby vacated, or that said highway is hereby altered as follows, to wit:] pursuant to said application; whereof an accurate survey has been made, which is as follows, to wit:—[here incorporate the survey.] The line of said survey to be the centre of said highway; and the same is established — rods in width.

In witness whereof, we have hereunto set our hands, this — day of —  
A. D. 18—.

GEORGE H. BABB, }  
EMANUEL TAYLOR, } supervisors.  
OLIVER F. MOORE, }

NOTE.—The order of the supervisors, laying out a highway ought always to be full, and should show sufficient to give jurisdiction, and that the law has in all respects been complied with.

A highway must be laid out in conformity with the route described in the petition; otherwise, the doings of the road commissioners will be without authority and invalid.—*Cole v. Town of Canaan*, 9 Porter's R., 88.

town clerk's office; and every such agreement, and every release of damages given, shall forever preclude such owner and all persons claiming under him from all further claim for damages.<sup>1</sup> If there be any owner or owners of lands through which any highway shall be laid out or altered, who shall not agree with the supervisors as to the compensation they shall receive for the damages sustained by them, by reason of the laying out or altering such highway, as provided in this section, and who shall not, previously to the making of the order laying out or altering such highway, deliver to said supervisors a written release of all claims for damages sustained by them by reason thereof, said supervisors shall at the time of making such order assess the damages which such owner or owners will sustain by reason of the laying out or altering such highway through their lands, and make an award in writing, specifying therein the sum awarded by them to each of said owners,

To be in writing and to bar claim for damages.

R. A., 1858.

If no release given, supervisors to assess damages, and file award with town clerk.

<sup>1</sup> *Form of release of damages by owner of land.*

Whereas a highway having been laid out by the supervisors of the town of *Necedah* in the county of *Juneau*, by an order bearing date the — day of —, 18—, described as follows [*set forth a description of the highway:*] which road passes through certain lands owned by me, described as follows [*describe the land.*] Now therefore, know all men by these presents that I, *John T. Kingston*, for value received do hereby release all claims to damages sustained by me by reason of laying out and opening said highway through my said lands above described.

In witness whereof I have hereunto set my hand and seal, this — day of —, A. D. 18—.

JOHN T. KINGSTON. [L. S.]

The owner of the soil over which a highway is laid, retains all his rights not incompatible with the public right of way, and may maintain trespass for cutting timber therein.—[*Babcock v. Lamb*, 1 *Conn.*, 238.]

The grant or laying out of a highway gives only a right of way to the public: the fee, or right of soil, remains in the original owner, and an action of trespass will lie for any exclusive appropriation of the soil.—[3 *Hill* 567; 12 *Wen.*, 98; 14 *Johns.*, 483; 2 *Johns.*, 357; 15 *Johns.*, 447.] As a public highway is a mere easement, and the seisin and right to convey still continue in the owner of the land over which it is laid out, it is no breach of the covenant of seisin and power to convey contained in the deed, that part of the land conveyed was a highway and used as such.—[*Whitbeck v. Cook*, 15 *Johns.*, 483. Held otherwise in New Hampshire. See *Fritchard v. Atkinson*, 8 *N. H. Rep.*, 335.]

It seems that the title to the land over which a turnpike road passes is vested in the company solely for the purpose of a road, and that when the road is abandoned, the land reverts to the original owner.—[12 *Wen.*, 371.]

The right of way, public or private, is but an incorporeal hereditament, an easement which *per se* does not divest the owner of the fee of the land. The soil is nevertheless the owner's, and he is entitled to the same remedies for an injury to his residuary interest, that he would be entitled to if it was entire and absolute.—[*Gidney v. Earl*, 12 *Wen.*, 98.]

*Form of agreement as to amount of damages upon laying out or altering highway.*

Whereas a highway has been laid out by the supervisors of the town of *Potosi* in the county of *Grant*, from — to —, [*describe the road with reasonable certainty*], which highway is more particularly described by an order of said supervisors bearing date, &c.,—and which highway passes through land of *James W. Seaton*, being known and described as follows [*describe the land with reasonable certainty*]. Now therefore it is hereby agreed between the said supervisors and the said *James W. Seaton*, that the damages sustained by the said *James W. Seaton* by reason of the laying out and opening said highway upon his said lands, be liquidated and agreed upon at — dollars.

In witness whereof the said supervisors and the said *James W. Seaton* have hereunto subscribed their names, this — day of —, A. D. 18—.

SAM. VANCE,  
WILLIAM RICHARDS, } supervisors.  
PHILLIP GROSS,  
JAMES W. SEATON,

for their respective damages; and if the owner of any parcel of land through which such highway shall be laid out or altered is unknown, the supervisors shall, in their award of damages, specify the amount of damages awarded by them to the unknown owner or owners of such parcel of land, giving a brief description of such parcel of land in their award; said award shall be signed by said supervisors, and be filed in the office of the town clerk, with the order laying out or altering such highway.<sup>1</sup>

If owner not satisfied, he may apply for a jury, &c.

R. A., 1868.

SECTION 61. If any owner of lands, through which a highway shall be laid out or altered by the supervisors, shall not be satisfied with the sum awarded for damages by such supervisors, he may, within thirty days after the filing of the award of damages in the office of town clerk, as provided in the preceding section, apply to a justice of the peace of an adjoining town, for a jury to assess and appraise such damages; such application shall be in writing, describing the premises; and any number of persons claiming damages on account of such highway, may join in such application;<sup>2</sup>

<sup>1</sup> *Form of award of damages, by supervisors on laying out or altering a highway.*

We the undersigned, supervisors of the town of *Cassville* in the county of *Grant*, having by an order bearing date the — day of —, A. D. 18—, upon due application for that purpose laid out [or altered] a highway as follows [here insert a description of the highway;] and certain owners of lands through which said highway is laid out [or altered,] to wit [state the names of owners,] not having released all claims to damages sustained by reason of the laying out and opening said highway, and not being able to agree with them as to the amount of such damages, having applied to them for that purpose and endeavored to make such agreement, we did proceed and assess the damages which such owners would sustain by reason of the laying out [or altering] such highway through their lands, as follows: to *L. S. Mason* on [describe the land,] we have awarded the sum of — dollars as damages to said land, and to the owner of the following parcel of land, to wit [give a brief description of the land,] the owner thereof being unknown to us, we have awarded the sum of — dollars as damages to said land.

In witness whereof we have hereunto set our hands, this — day of —, 18—.

WILLIAM P. DEWEY, }  
EDWARD A. KIDD, } supervisors.  
HENRY BURGESS, }

It is held in New Hampshire that the doings of selectmen in laying out highways cannot be supported unless it appear that due recompense was allowed to the owners of lands through which they were laid out, and that the owners had an opportunity to be heard upon the subject of damages.—[*Pritchard v. Atkinson*, 3 *New Hamp. R.*, 335.]

Where a highway is laid out along the line of a farm, taking no portion of the land of the owner, but subjecting him to the expense of maintaining the whole of a fence, the expense of the half of which only was formerly borne by him, such owner, under the law, is not entitled to compensation for damages.—[*People v. Sups. Oneida Co.*, 19 *Wen.*, 120.]

It is held in Massachusetts that where damages upon laying out a road have been assessed or awarded to an individual, the town would be liable for the amount thereof, although the road had been discontinued before payment and in fact never entered upon. That the owner had a vested right to such damages and was entitled to a writ of *mandamus* to compel payment.—[*Harrington v. Berkshire*, 22 *Pick.*, 263.]

<sup>2</sup> *Form of application to a justice for a jury to assess and appraise damages.*  
To *Hiram Bushnell*, a justice of the peace of the town of *Wauzeka* in the county of *Crawford*.

The supervisors of said town of *Wauzeka* having by an order bearing date the — day of —, 18—, laid out a highway from — to — [describe the road with reasonable certainty,] and which is laid out across the following described lands, of which the undersigned is the owner, to wit [describe the land,] and the undersigned not being satisfied with the sum offered for damages

the party appealing shall serve on two of the supervisors of such town, at least six days before the time fixed for making such application, a notice in writing, specifying therein the name of the justice to whom, and the time and place when and where, such application will be made.<sup>1</sup>

SECTION 62. Any person applying for a jury, as mentioned in the preceding section, shall, by himself or agent, execute to the supervisors of the town, and file with the justice, a bond, with one or more sureties, to be approved by such justice, conditioned to pay all costs arising from such appeal and appraisal of damages, provided such jury shall not award a larger amount of damages than were awarded by the supervisors of the town.<sup>2</sup>

Person applying to execute a bond, &c.  
R. A., 1858.

SECTION 63. Upon the filing of such bond, the justice shall make a list of fifteen disinterested freeholders of his town, not of kin to the owner or occupant of said lands; each party may object to five on such list, and if none of the supervisors shall be present, the justice shall strike off the five names for the supervisors; and

On filing bond, justice shall make jury list; how jury to be struck.  
R. A., 1858.

by said supervisors, [or as the case may be,] he does apply to you for a jury to assess and appraise such damages.

Dated at *Wauzeka*, this — day of —, 18—.

JOSEPH BURLINGAME.

NOTE.—The notice to the supervisors of the time and place of meeting of the jury, is to be given by the party interested, and may be in the following form; a separate copy being left with each supervisor.

<sup>1</sup> Form of notice to supervisors in case of application to justice for jury to assess damages.

To *Joseph U. Searle* and *Oliver Langdon* two of the supervisors of the town of *Seneca* in the county of *Crawford*.

You are hereby notified that the undersigned, being dissatisfied with the sum awarded to him by the supervisors of said town of *Seneca* for damages sustained by him upon the laying out of a highway by said supervisors across the land of the undersigned in said town, by an order bearing date the — day of —, 18—, will apply to *Hiram Bushnell*, esq., a justice of the peace of the town of *Wauzeka* in said county, being an adjoining town, at his office in said town, on the — day of —, 18—, at the hour of — o'clock — M., for a jury to assess and appraise such damages.

Dated this — day of —, 18—.

LEMUEL GREEN.

<sup>2</sup> Form of bond to town in case of application for jury to assess damages.

Know all men by these presents, that we, *William McCord* and *Elisha Baily* of the town of *Middleton* in the county of *Dane*, are held and firmly bound to the supervisors of said town of *Middleton* in the penal sum of — dollars, for the payment of which we bind ourselves, our heirs, executors, and administrators, and each of them, firmly by these presents. Sealed with our seals and dated this — day of —, 18—.

Whereas the above bounden *William McCord*, not being satisfied with the sum offered for damages by the supervisors of said town of *Middleton* to his land by reason of a highway being laid out upon his land by said supervisors, has applied to *John Bathgate*, a justice of the peace of said town, for a jury to assess and appraise such damages.

Now, therefore, the condition of this obligation is such, that if the said *William McCord* shall pay all costs arising from such appeal and appraisal of damages, in case the jury should not award a larger amount of damages than was awarded by the said supervisors, then this obligation to be void; otherwise in full force.

WILLIAM McCORD. [L. S.]  
ELISHA BAILY. [L. S.]

Justice to issue  
precept to sum-  
mon jury.

the justice shall thereupon issue a precept to some constable of his town, neither interested nor of kin to any person through whose lands such road is laid, directing him to summon the five persons named in such list, not objected to by the parties, to meet at a time and place, to be specified in such precept, to appraise the damages sustained by the laying out or altering of such highway.<sup>1</sup>

Jury to be sworn  
and to view high-  
way and appraise  
damages.

R. A., 1858.

SECTION 64. At the time and place appointed for the appearing of such a jury, they shall be sworn by the justice, justly and impartially to make such appraisal, and shall proceed to view such highway, and hear the statements and proofs of the parties, if they deem necessary;<sup>2</sup> and they shall make return of their appraisal to the justice, which shall be certified by such justice and filed with the town clerk;<sup>3</sup> and if the amount of the appraisal of such jury shall exceed the amount awarded by the supervisors, the costs and expenses shall be paid by the town; but if the jury

<sup>1</sup> Form of precept to constable for jury to assess damages.

Walworth county. }  
Town of Elkhorn. } ss.

To D. B. Moore, a constable in the town of Elkhorn, in said county.

In the name of the state of Wisconsin, you are hereby commanded to summon [here insert the names of the five persons named in the list] to meet on the — day of —, 18—, at the hour of — o'clock, — M., at the office of the undersigned justice, in said town of Elkhorn, to make a jury to appraise the damages sustained by Henry Bradley by the laying out [or altering] a highway upon the land of said Henry Bradley, by an order of the supervisors of said town, bearing date the — day of —, 18—, and forthwith make return.

Given under my hand, this — day of —, 18—.

AMOS EASTMAN, justice of the peace.

<sup>2</sup> Form of oath to jury to assess damages.

You, and each of you, do solemnly swear, that you will justly and impartially make an appraisal of the damages sustained by Henry Bradley, by reason of the laying out of a highway by the supervisors of the town of —, by their order, dated the — day of —, 18—. So help you God.

<sup>3</sup> Form of appraisal of jury of damages.

Walworth county. }  
Town of Elkhorn. } ss.

We, the undersigned, residents and freeholders of the town of Delavan, and not of kin to —, being the jury summoned, drawn, and sworn to appraise the damages sustained by said —, by reason of the laying out a road through his lands, in pursuance of the order of the supervisors of the town of Elkhorn, bearing date the — day of —, 18—, having viewed and examined such highway, and the premises in question being [describe the land,] and having heard the statements and proofs of the parties, do appraise and assess the damages of the said — at — dollars.

Given under our hands, this — day of —, 18—.

[To be signed by all the jurors.]

I hereby certify that the above is the appraisal of damages returned to me by the jury whose names are thereto subscribed.

AMOS EASTMAN, justice of the peace.

When a road was opened by order of the proper authority, according to law in every respect, except that no damages were assessed by the jury to the owners of the land,—held that none but those owners could impeach the order for that cause.—[Woolard v. McCullough, 1 Fredell R.]

shall not award more damages than were awarded by the supervisors, the cost and expenses shall be paid by the appellant.

SECTION 65. Each person duly summoned, who shall attend as a juror, shall be allowed six cents a mile for each mile necessarily traveled from his place of abode to the place of meeting, and fifty cents for his services on such jury; and the justice shall be entitled to one dollar for his fees. Fees of jurors and justice.

SECTION 66. All damages consequent upon laying out or altering any highway, as finally settled upon, pursuant to the provisions of this chapter, and all lawful charges against a town for the services of any jury in the assessment of damages, or for the fees of any justice or constable provided for in this chapter, or for the services of any commissioners appointed in the manner herein provided, shall be laid before the town board to be audited, and the amount allowed shall be levied and collected in the same manner as other town charges: *provided*, that no damages shall be paid to, or received by, the party aggrieved, until such road shall have been opened by order of the supervisors. Damages and costs of laying roads when payable by town, to be audited and collected. 4 Wis., 408. S. L. 1850, ch. 141.

SECTION 67. Whenever it shall be deemed necessary to lay out a highway upon the line between two towns, such highway shall be laid by the supervisors of each of said towns, either upon said line, or as near thereto as the situation of the ground will admit; and they may vary the same, either to the one side or the other of such line, as they may deem necessary. Town line roads to be laid by supervisors of both towns.

SECTION 68. The supervisors of each adjoining town, upon laying out a highway upon the line between such towns, shall determine what part of such highway shall be made and kept in repair by each town, and what share of the damages, if any, shall be paid by each. Supervisors to determine what portion to be repaired, and what damage to be paid by each.

SECTION 69. The supervisors of each such adjoining town, shall proceed in all things as is required of the supervisors of one town in laying out highways in such town; and their proceedings, or a duplicate thereof, shall be returned to the town clerk of each town; and their order, including the survey, shall be recorded in each town clerk's office; and each town shall have all the rights, and be subject to all the liabilities, in relation to the part of such highway to be made or repaired by such town, as if the same were wholly located in such town. Supervisors how jointly to proceed, &c.

SECTION 70. Whenever application shall be made by any freeholder whose land is excluded from the highway, to the supervisors of the town, to lay out a private road, the supervisors may lay out such road; and the damages thereof to any owner of the lands through which such road may be laid, shall in like manner be ascertained and determined; and in case of appeal, the like proceedings shall be had thereon as is provided in this chapter for the laying out and altering of public highways; except that the applicant for such private road shall, in all cases, pay the damages and costs arising from the laying out of such road.<sup>1</sup> Private roads how laid out.

(1) The record of a private road laid out by the commissioners, designating the course, distance, and quantity of land taken, is sufficiently definite to determine the width of the road, and parol evidence of the result, from the data given, is admissible.—[*Herrick v. Stover*, 5 *Wen.*, 580.]

Private road to be for use of applicant, and owner of land not to use same, &c.

**SECTION 71.** Every such private road, when so laid out, shall be for the use of such applicant, his heirs and assigns, but not to be converted to any other purposes than that of a road; nor shall the occupant or owner of the land through which such road shall be laid out, be permitted to use the same as a road, unless he shall have signified his intention of so making use of the same to the supervisors, or the jury who ascertained the damages sustained by laying out such road, and before such damages were so ascertained.

Person applying for private road, to make and repair fences.

**SECTION 72.** Whenever any person or persons shall apply for and obtain according to law, a private road or cartway from his or her dwelling to any public road, and through the lands of others, the person or persons, for whose benefit and at whose request such private road or cartway was granted, shall, immediately upon the opening thereof, make and keep in good repair all fences required by the opening of such road.

All papers relating to roads to be filed in office of town clerk.

**SECTION 73.** All applications, certificates, and other papers, relating to the laying out, altering, or discontinuing any public or private road, shall be filed in the office of the town clerk as soon as the supervisors have decided thereon.

Public roads to be four rods wide, and private not more than three.

**SECTION 74.** All public roads to be laid out by the supervisors of the town shall not be less than four rods wide, nor shall any private road be laid more than three rods wide.

No supervisor to act when interested.

**SECTION 75.** No supervisor shall act as a commissioner of highways in laying out, altering, or discontinuing any public or private road in which he may be personally interested.

Supervisors may administer oaths.

**SECTION 76.** The supervisors of the several towns are, by virtue of their offices, authorized to administer any oaths required by the provisions of the chapter.

Person aggrieved by laying out or altering road may appeal in thirty days.

**SECTION 77.** Any person who shall consider himself aggrieved by any determination of the supervisors of any town, either in laying out, altering, or discontinuing, or in refusing to lay out, alter, or discontinue any highway, may, within thirty days after such determination, appeal therefrom, and apply to a justice of the peace of the town for the appointment of commissioners, to whom an appeal from such determination of the supervisors may be taken.

How appeal to be made.

**SECTION 78.** Every application for any appeal from the determination of the supervisors shall be made in writing to such justice of the peace, and shall briefly state the grounds upon which it is made, and whether it is brought to reverse entirely the determination of the supervisors, or only to reverse a part thereof: and in the latter case, it shall state what part.<sup>1</sup>

An obstruction of a private road is a mere private injury in which the public have no concern.—[*Fowler v. Lansing*, 5 *Wen.*, 580.]

An obstruction placed in a private road by the owner of the land over which it is laid out, cannot be lawfully removed by one having no right to use the road.—[*Drake v. Rogers*, 3 *Hill*, 604.]

<sup>1</sup> Form of appeal to justice of the peace.

To *Henry Barber*, a justice of the peace of the town of *Cadiz*, in the county of *Green*.

I, *A. B.*, of the town of *Cadiz*, in said county, considering myself aggrieved by the determination of the supervisors of said town of *Cadiz* by their order

SECTION 79. Upon the filing of such application and a bond executed to the supervisors of the town, with sufficient sureties, to be approved by the justice, conditioned to pay all costs arising from such appeal, provided the determination of the supervisors in laying out, altering, or discontinuing, or refusing to lay out, alter, or discontinue such highways, (as the case may be,) shall not be reversed,<sup>1</sup> such justice shall issue a notice, specifying therein a time and place for the appointment of commissioners, which notice shall be served on one or more of the supervisors, at least six days before such time;<sup>2</sup> and at the time and place so appointed the justice shall make a list of eighteen disinterested freeholders of the county; each party may object to six on such

Bond to be executed, notice to be issued and served on supervisors, list of freeholders made, &c.

bearing date the — day of —, 18—, in laying out [or altering, or discontinuing, or refusing to lay out] a highway in said town, do hereby appeal to you from such determination.

The highway [or alteration of the highway] in question, is described in said order, which was filed and recorded in the office of the town clerk of said town, on the — day of —, 18—, as follows, [describe the road as in the order.] The grounds upon which this appeal is made, are [state the same briefly:] and said appeal is brought to reverse entirely the determination of the said supervisors [or, to reverse the determination, &c., specifying the part sought to be reversed.]

Dated this — day of —, 18—.

A. B.

<sup>1</sup> Form of bond to supervisors on appeal to justice of the peace.

Know all men by these presents, that we, A. B., &c., of the town of —, are held and firmly bound to the supervisors of the said town of —, in the penal sum of — dollars, for which payment well and truly to be made, we bind ourselves, our heirs and executors, jointly and severally, firmly by these presents.

Sealed with our seal and dated this — day of —, 18—.

Whereas, the above bounden A. B. has appealed from the determination of the supervisors of the town, above named, in laying out [as in the appeal,] a highway, by their order bearing date the — day of —, 18—. Now the condition of this obligation is such that if the above bounden A. B. shall pay all costs arising from such appeal, provided the determination of the supervisors in laying out [or as the case may be] such highway, shall not be reversed, then this obligation to be void; otherwise to remain in force.

A. B., [L.S.]  
C. D., [L.S.]

<sup>2</sup> Form of notice to be given by justice to supervisors for appointment of commissioners.

To the supervisors of the town of Winchester, in the county of Winnebago.

Take notice, that A. B., of the said town of —, has appealed to me from your determination contained in your order, made on the — day of —, 18—, and filed and recorded in the office of the clerk of said town on the — day of —, 18—, laying out [or as the case may be] a highway described as follows, [describe as in the appeal,] and that I will attend at the house of —, in said town, on the — day of —, instant, [or, next,] at ten o'clock in the forenoon of that day, to appoint commissioners to hear and decide the said appeal.

Given under my hand at —, this — day of —, 18—.

HENRY H. JOHNSON, justice of the peace.

The attendance of the supervisors without notice, will be a waiver of notice.—20 Wen., 186.

Where commissioners of highways have acted upon a petition and treated it as valid, they cannot afterward, in any proceeding in which they may be concerned, deny its sufficiency.—[See Carmel v. Judges of Putnam, 7 Wen., 264.]



list, and in case none of the supervisors shall be present, the justice shall strike off the names for the supervisors, and out of the number not struck off, the justice shall, by lot, select three for such commissioners.

Justice to annex a warrant, and what to contain, and commissioners to be sworn.

SECTION 80. The justice shall then annex to the application a warrant, under his hand, appointing a time and place for the meeting of such commissioners, and issue the same to the persons so appointed, directing them to view and examine the highway described in the application, and the determination of the supervisors in laying out, altering, or discontinuing, or in refusing to lay out, alter, or discontinue the same, (as the case may be,) and to make return of their decision thereon to him, within twenty days after the date of the warrant; and before proceeding to make such view and examination, they shall be duly sworn justly and impartially to discharge their duties as such commissioners.<sup>1</sup>

Decision of commissioners to be signed and filed.

SECTION 81. The decision of such commissioners shall be reduced to writing and signed by them and filed with the town clerk;<sup>2</sup> and if the determination of the supervisors shall be affirmed by the commissioners, the party appealing shall pay the expense of the proceedings had in the matter; but if such determination

Who to pay expense.

<sup>1</sup> Form of justice's warrant to commissioners to determine appeal.

County of Columbia. }  
Town of Randolph. } ss.

To *Thomas Williams, J. M. Bay, and Frederick Langdon*, of said county.

You are hereby appointed by the undersigned justice of the peace, in pursuance of the statute in such case made and provided, commissioners to hear and determine the appeal hereto attached; and you are commanded to meet in the said town of —, on the — day of —, at ten o'clock A. M., to view and examine the highway described in the aforesaid application for an appeal, and the determination of the supervisors in relation to the said highway, [describing their determination,] and make return of your decision thereon to the undersigned justice of the peace, within twenty days from the day of the date thereof.

Given under my hand at —, this — day of —, 18—.

BENJ. WILLIAMS, justice of the peace.

Form of commissioner's oath.

You, and each of you, do solemnly swear, that you will justly and impartially discharge your duties as commissioner on the appeal of *A. B.*, which you have been appointed to determine. So help you God.

<sup>2</sup> Form of decision of commissioners on appeal from supervisors.

Whereas, *John Bentley* of the town of *Courtland*, in the county of *Columbia*, considering himself aggrieved by the determination of the supervisors of said town, by an order made by them bearing date the — day of —, 18—, laying out [or, as the case may be] a highway in said town, upon due application to them in writing for that purpose, described as follows, [describe the highway,] appealed to *John H. Roberts*, a justice of the peace of said town, from such determination, upon which we, the undersigned, were duly appointed commissioners to view and examine said highway and to hear and determine said appeal, and having been duly sworn for that purpose, and having met at — on — the day of —, in pursuance of the warrant of a justice, we did proceed to view and examine the said highway, and having viewed and examined the same we do hereby adjudge, decide, and determine, that the order and determination of the said supervisors be, and the same is, in all things affirmed [or reversed in part,] as follows, to wit: [set forth the decision in full.]

shall be reversed, then the expense shall be a charge against the town; each of such commissioners shall be entitled to one dollar a day for their services, and the justice shall be entitled to one dollar for his fees.

SECTION 82. When an appeal shall have been made from the determination of the supervisors, for refusing to lay out, alter, or discontinue a highway, and such determination shall be reversed by the commissioners, the supervisors shall proceed to lay out, alter, or discontinue such highway in the same manner, and the proceedings thereon shall be the same, as if they had originally determined to lay out, alter, or discontinue such highway.

If decision of supervisors is reversed, how they are to proceed as to road.

SECTION 83. The determination of the supervisors of any town in refusing to lay out, alter, or discontinue any highway shall be final (unless such determination be appealed from, as provided in this chapter) for the term of one year after the making of such determination; and no application for laying out, altering, or discontinuing any such highway shall be again acted upon by said supervisors within said term of one year; and in case the determination of the supervisors of any town, in laying out, altering, or discontinuing any highway, shall be appealed from, as provided in this chapter, and such determination shall be reversed on such appeal, the said supervisors shall not, within one year after the making of the determination reversed on such appeal, act again upon an application to lay out, alter, or discontinue any such highway.

Determination of supervisors final or one year unless appealed from.

R. A., 1858.

SECTION 84. Whenever the supervisors shall have laid out or altered any public highway through any enclosed, cultivated, or improved lands, and their determination shall not have been appealed from, they shall give the owner or occupant of such lands notice in writing to remove his fences within such time as they shall deem reasonable, not less than thirty days after giving such notice; but no person shall be required to remove such fence between the first day of April and first day of November in any year; and if such owner or occupant shall not remove his fences within the time required in such notice, the supervisors shall cause

Fences on enclosed lands, when to be removed.

4 Wis., 408.

Given under our hands at —, this — day of —, 18—.

JULIUS AUSTIN,  
JAMES H. BONNEY, } commissioners.  
DANIEL WHITE,

It has been held in New York, (*Harrington v. People*, 6 Barb., 607,) that to give commissioners of highways jurisdiction of proceedings to lay out a highway, an application must be made to them in writing duly signed as required by law; and that an order directing the laying out of a highway, made on appeal from the decision of such commissioners, must show the making of such an application to the commissioners, otherwise the order will not be conclusive evidence of the regularity of the proceedings for laying out the road.

On an appeal from the doings of the commissioners in laying out a road, an inquiry into the damages of the owners of lands, it seems, will be proper to enable the supervisor to determine whether the benefit will equal the expense, and whether the public good will be promoted by the road.—(*Bushwick v. Messerole*, 10 Wen., 122.)

It seems that when commissioners on appeal have committed errors in the return of their decision, reversing the order of the supervisors in determining to lay out a highway, they have a right, after return of their decision, to deposit in the town clerk's office a document correcting the errors; which will be deemed a valid amendment.

The reversal of the order of the supervisors was a quasi-judicial act and could not after the act was done be reversed or altered by the commissioners, but making up the record of their proceedings was ministerial; and should they refuse to make such correction, a *mandamus* will be awarded requiring them to do so.—(*Hallock v. Woolsey*, 23 Wen., 328.)

such fences to be removed, and shall direct such road to be opened; but if the determination of the supervisors shall have been appealed from, then such notice shall be given after the final decision of such appeal.<sup>1</sup>

<sup>1</sup> Form of notice for removal of fences.

To Mr. A. B.

You will take notice that a highway has been legally laid out through lands owned [or occupied] by you, described as follows, [describe the lands with reasonable certainty,] and which highway has been laid out and established according to an order, a copy of which is hereunto annexed.

You are therefore hereby required to remove your fences from within the bounds of said highway, within — days after service of this notice.

Dated the — day of —, 18—.

C. D. } supervisors of the  
E. F. } town of —.  
G. H. }

NOTE.—This notice should be served by leaving a copy with the owner or occupant, and should be served by, or in the presence of, some indifferent person, having no interest in the matter; and a true copy should in all cases be retained by the supervisors, as actual notice must be proved should it ever be questioned, and will not be presumed. The presumption, which is sometimes indulged in favor of public officers, does not extend to such a case.—[*Case v. Thompson*, 6 *Wen.*, 634.]

If fences are removed without giving thirty days' notice, all persons concerned therein are trespassers.—[*Kelly v. Horton*, 2 *Cov.*, 424.]

It has been held in numerous instances, that payment or assessment of damages of the owners of lands through which a public highway is laid, is not a condition precedent to the right to open the road; and where a law, authorizing the taking of private property for public purposes, provides for a just compensation to the owner, it is not unconstitutional because it omits to make the assessment and payment of damages a condition precedent to an entry upon, and occupation of, the premises. It is deemed sufficient if the law makes definite and certain provisions for ultimate compensation to the owner.—[*Baker v. Johnson*, 2 *Hill*, 342; *Smith v. Helmer*, 7 *Barb.* 416; *Robottom v. McClure*, 4 *Black*, 505; *Norton v. Peck*, 3 *Wis. R.*, 714. But not so, it seems, in case of a railroad or private corporation.—[*Bloodgood v. Mohawk & Hudson River R. R. Co.*, 18 *Wen.*, 9.]

Where commissioners of highways had laid out a road in pursuance of law, but neglected to file their proceedings, and a mandamus directed to their successors, commanding them to open it, by mistake misdescribed the road; on application for a rule requiring the defendants to furnish the original application, and that the mandamus be amended thereby, it appeared that the paper sought for had remained in the hands of H., a former commissioner, and was beyond the control of the defendants. Motion, therefore, denied as to the defendants. But a rule was made upon H., that he file a paper with the clerk of the town, &c., or show just cause why he should not do so.—[*People v. Vail*, 1 *Cov.*, 589.]

Where the commissioners of highways refuse to open a road laid out, a mandamus lies to compel them to do so; which writ need not in the first instance be directed to the commissioners by their individual names. It is only in case of disobedience to the writ, that they are to be proceeded against personally.—[*People v. Champion*, 16 *Johns.*, 61.]

A mandamus to commissioners of highways to open and work a road will be granted without regard to the near approach of the expiration of their offices: when the term of office expires, their successors must obey the command of the writ.—[*People v. Collins*, 19 *Wen.*, 56.]

Where a road is used and traveled by the public as a highway, and is recognized and kept in repair as such, by the authority whose duty it is by law to open and repair public roads; proof of these facts furnishes a legal presumption, liable to be rebutted, that such road is a public highway.—[*Eymann v. People*, 1 *Gill*. *Neely v. Brown*, *ib.* 10.]

Parol evidence is admissible to show where a road is located. Although there should be some uncertainty as to the precise location of the road, yet if the evidence be such as to convince the jury as to its location it is sufficient for them to act upon.—[*Neely v. People*, 1 *Gill.*, 10.]

The laying out of a road over the land of a person, by the supervisors, is not taking or appropriating it to the public use.

The land over which a highway is laid out cannot be said to be taken for public use until it is opened by order of the supervisors.

The highway must be opened by order of the supervisors before the public acquire any right to travel upon it, and until the right to use the property vests in the public, by virtue of such order, it remains private property, and may be used by the owner in the same manner as before the road was laid out.

The owner of land over which a highway is laid out is not entitled to compensation or damages until the road is opened by order of the supervisors.—[*See ante*, Section 68.]

A majority of the board of supervisors may order a road opened, but one supervisor cannot sign the name of another to such order without his immediate assent and direction.—[*The State ex. rel. Evans v. James*, 4 *Wis. R.*, 408.]

An appeal suspends the powers of the supervisors; and until their acts are affirmed by a

SECTION 85. Every public highway already laid out, no part of which shall have been opened and worked within four years from the time of its having been so laid out, and every such highway hereafter to be laid out, no part of which shall be opened and worked within the like period, shall cease to be considered as a public highway; and all public highways now in use, heretofore laid out and established, pursuant to law, and all roads not recorded which shall have been used as public highways twenty years or more, and roads not recorded which shall hereafter be used ten years or more, shall be deemed public highways.

All highways not opened and worked within four years to cease.

What roads to be deemed highways, though not recorded.

SECTION 86. All highways laid out by the supervisors of any town and recorded, any portion of which shall have been opened and worked for the term of three years, shall be deemed to be, and are hereby declared to be legal highways, so far as they have been so opened and worked, notwithstanding the statutes may not have been, in all respects, pursued in laying out the same.

S. L. 1857, ch. 19.

SECTION 87. When any highway shall be discontinued, the same shall belong to the owner or owners of the adjoining lands; if it shall be located between the lands of two or more different owners, it shall be annexed to the lots to which it originally belonged, if that can be ascertained; if not, it shall be equally divided between the owners of the lands on each side thereof.

Discontinued highway to whom to belong.

SECTION 88. If any discontinued highway shall be set to a tract of land through which a new highway shall be laid out, the same may be taken into consideration in estimating the damages sustained by the owners, and in estimating the damages which may be sustained by any person owning or interested in lands, by reason of laying out or altering any highway, the benefit which such person may receive thereby shall be taken into consideration.

Value of discontinued highway set to land, and benefits of owner from road, to be considered in estimating damages.

SECTION 89. All United States and territorial roads, and all state roads which shall hereafter be laid out, shall be opened and worked the same as other highways; and whenever any such state road shall be laid out through enclosed, improved, and cultivated lands, without the consent of the owner, the damages claimed therefor may be determined by agreement between the commissioners authorized to lay out such road and the owner; but the damages thus allowed by the commissioners shall not in the aggregate exceed fifty dollars upon any such road in any one town; or the same proceedings may be had for the appraisal and collection of damages therefor, as if such road were laid out under the provisions of this chapter: *provided*, application for a jury to appraise such damages shall be made within thirty days after the return of the commissioners establishing such road, shall have been filed in the office of the clerk of the board of supervisors of the county where such damages are claimed.

United States, territorial, and state roads to be opened and worked, &c.

When laid through improved lands, how damages to be obtained.

decision they cannot open the road. If they do so, they are trespassers.—[*Clark v. Phelps, Cow.*, 190.

It seems that a road passing through unimproved and unenclosed lands is considered in contemplation of law, opened, when established.—[*Ferris v. Ward*, 4 *Gill*, 499.

If, on an order being made discontinuing a highway, a fence be built across it, an appeal subsequently brought will not have the effect of rendering the fence a public nuisance.—[*Drake v. Rogers*, 8 *Hill*, 604.

Supervisors may alter but shall not discontinue said roads.

S. L. 1853, ch. 44.

When altered, person aggrieved may appeal to county board of supervisors.

County board to hear and determine appeal, and who to pay costs.

State roads to be viewed, &c., within two years.

S. L. 1853, ch. 44.

How commissioners to lay state roads to proceed.

Id.

Commissioners and surveyor to make certified return of plot and survey.

Id.

Return to be forwarded to and recorded by secretary of state.

Id.

Compensation of

SECTION 90. The supervisors of any town, through which any United States, territorial, or state road shall pass, and when such road lies wholly within such town, may alter the same within their town in the same manner as they are authorized to alter other highways, but they shall not discontinue or obstruct any such road.

SECTION 91. Whenever any road specified in the preceding section shall be altered as therein provided, any person considering himself aggrieved by such alteration, may appeal from the decision of such supervisors, within thirty days thereafter, to the county board of supervisors of the same county, upon filing with the town clerk of the proper town, a bond, executed to the supervisors of such town, with sufficient sureties, to be approved by such clerk, conditioned to pay all costs arising from appeal, provided the determination of the town supervisors, in altering such road, shall not be reversed; and the said board shall hear and determine such appeal; and if the determination of the town supervisors shall not be reversed, the appellants shall pay such costs; but if the same shall be reversed, then the town where such road shall be altered shall pay the same.

SECTION 92. All state roads located and established within this state, shall be viewed, surveyed, and established, and return made thereof, agreeably to the provisions of this chapter, within two years from the passage of the act by which said road may be granted, or authorized to be laid out.

SECTION 93. The commissioners appointed to locate and establish any state road, shall, at least twenty days before they proceed to locate the same, cause copies of the special law by which they act to be posted up in three public places in each town through which the said road may pass, or run into, which notice shall set forth the time and place the said commissioners will meet to locate said road; may cause the same to be correctly surveyed, and marked from the beginning throughout the whole distance, by setting stakes in the prairie at a reasonable distance apart, and by blazing trees in the timber.

SECTION 94. The commissioners and surveyors of each road shall make a certified return of the survey and plot of the whole length of said road, specifying in said return, the width, depth, and course of all streams, the position of all swamps and marshes, and the face of the country generally, noting where timber and where prairie, and the distance said road shall have been located in each county.

SECTION 95. Said return and plot shall be signed by a majority of the commissioners and the surveyor of said road, and forwarded to the secretary of state, within sixty days after the view and survey of the same, to be by him recorded and preserved; they shall, also, within sixty days, as aforesaid, deposit in the office of the clerk of the board of supervisors of each county through which said road shall be laid, a return and plot as aforesaid, of so much of said road as shall be laid out and established in said county, to be recorded as aforesaid.

SECTION 96. The commissioners shall be entitled to such

compensation for their services in laying out all state roads, from the different counties through which the roads may pass, as the supervisors of said counties may deem just, to be paid out of the treasury of the county.

commissioners to be paid by county.  
Id.  
S. L. 1850, ch. 217.

SECTION 97. The board of supervisors of any town shall not have the power to alter or vacate any state road laid out in accordance with the provisions of this chapter, when the road shall not lie wholly within such town.

Supervisors shall not alter state road.  
S. L. 1853, ch. 44.

SECTION 98. The state shall not be liable for any expenses incurred in or damages arising from the laying out of any state road heretofore authorized by law to be laid out, and which has not been laid out, or which may hereafter be authorized, unless the law providing for the laying out of such road shall expressly provide that the state shall pay such expenses and damages.

State not liable for expenses or damages in laying state road.  
S. L. 1850, ch. 217.

SECTION 99. All damages occasioned by the laying out and opening any state road, shall be paid by the several counties in which the same may be located.

Damages to be paid by the counties, &c.  
Id.

SECTION 100. No state road shall be granted by the legislature, unless it shall appear that notice has been given of the intention to apply for the same, by the publication of a notice to that effect, four weeks successively, in some newspaper in such county through which it is proposed to lay such road: *provided*, that if there be no newspaper published in any such county, it shall be lawful to give such notice by printing [posting] the same, at three or more of the public places near the line of said proposed road, for the term of four weeks.

No state road to be granted unless notice of application has been given.  
S. L. 1851, ch. 270.

#### OF OBSTRUCTIONS TO HIGHWAYS, ENCROACHMENTS THEREON, AND PENALTIES.

SECTION 101. Whoever shall willfully obstruct any highway, or fill up, or place any obstruction in, any ditch constructed for draining the water from any highway, shall forfeit for every such offense, a sum not exceeding twenty-five dollars; and the overseer of the proper district shall cause such obstruction immediately to be removed.<sup>1</sup>

Penalty for obstructing highway or ditch.

SECTION 102. In every case where a highway shall have been

Encroachment

(1) It is an indictable offense at common law, to place and continue within the established limits of a highway, a wall, or stones, or anything which obstructs the full enjoyment by the public of an easement co-extensive with those limits, although such wall, stones, or other thing, be not placed and continued within that part of the highway which can be safely used for travel.—*Commonwealth v. King*, 12 *Metcalfe*, 115.

All the land within a highway fence is not necessarily subject to the right of way; and if not, it may be occupied by the owner; and if he places an obstruction there, and another is injured by it, he is not therefore liable; and it is held, that though such obstruction be within the highway, he is not liable unless the person injured exercised ordinary diligence to avoid it.—*8 Cow.* 189. Yet he would be otherwise liable for obstructing the highway.—*[See 5 Gil.* 371.]

In an action to recover a penalty for obstructing a highway, it was held that it was not necessary to produce record evidence of the road; and if such evidence is introduced, as for instance the order establishing the road, it is not necessary prior to the introduction of such order, to show that all the previous steps required by the statute had been taken; but that the presumption is, that the antecedent proceedings have been regular, which presumption, however, is subject to be rebutted.—*[Neally v. Brown*, 1 *Gibson*, 10; see also *Sage v. Barnes*, 9 *Johns.*, 865.]

Where the owner of the soil dug a race-way across a road to conduct water to his mill, it was held that he must restore it to a traveling condition, and if an injury occurred, though he used the utmost care to prevent it, he was liable in damages; that the right of the owner depended upon mere sufferance; whenever an injury occurred, the race-way would be adjudged a nuisance.—*[Dyger v. Schenck*, 23 *Wen.*, 445.]

on highway,  
proceedings  
how to remove.

laid out and opened, and the same has been or shall be encroached upon by any fence, building, or other fixture, the supervisors shall make an order, under their hands, requiring the occupant of the land through or by which such highway runs, and to which such fence, building, or other fixture shall be appurtenant, to remove the same beyond the limits of such highway within thirty days; and they shall cause a copy of such order to be served upon such occupant; and every such order shall specify the width of the road, the extent of the encroachments, and the place or places in which the same may be, with reasonable certainty.<sup>1</sup>

Penalty for not  
removing.

SECTION 103. If the fence, building, or other fixture causing such obstruction shall not be removed within thirty days after the service of a copy of such order, such occupant shall forfeit the sum of fifty cents for every day, after the expiration of that time, during which such encroachment shall continue.

Proceedings if  
encroachment is  
denied.

SECTION 104. If the occupant, upon whom a copy of such order shall be served, shall deny such encroachment, the supervisors, or some of them, shall apply to some justice of the peace of the county for a precept, which shall be issued by such justice, directed to any constable of the county, commanding him to summon six disinterested freeholders thereof, to meet at a certain day and place, and not less than four days after the issuing thereof, to inquire into the premises; and the constable to whom such precept shall be directed, shall give at least three days' notice to one of the supervisors of the town, and to the occupant of the land, of the time and place at which such freeholders are to meet.<sup>2</sup>

<sup>1</sup> Form of order of supervisors, for removal of obstruction in case of encroachment.

— county. } ss.  
Town of —.

We, the undersigned, supervisors of the town of —, in the county of —, having ascertained that the public highway in said town, leading from the house of C. D. to the house of G. H., is encroached upon the — side thereof, along the lands in the occupation of C. D., by a rail fence erected by the present or some former occupant thereof, which forms a part of the enclosure of said land; and having ascertained the easterly bounds and limits thereof to be upon and according to the following line, to wit: beginning, &c. [insert the survey;] and that all that narrow strip or piece of land which lies under said rail fence [or, under said rail fence, and between the said rail fence and the line above described, as the fact may be,] is a part of the public highway aforesaid: it is therefore ordered, by the undersigned supervisors of said town, that the said rail fence be removed, so that the said highway be open and unobstructed, and of the breadth originally intended, which was — rods, within thirty days from the date of the service of this order.

Given under our hands at —, this — day of —, 18 —.

A. B., &c., supervisors.

<sup>2</sup> Form of precept to summon freeholders, in case of an encroachment.

Pierce county, }  
Town of Mertell. }

To any constable of said county, greeting:—

You are hereby commanded to summon six disinterested freeholders of the said county of —, to meet at the house of O. P., in said town, on the — day of — instant, at — o'clock in the — noon, to inquire whether any encroachment has been made, and by whom, on the highway running by [or, through] the land now occupied by C. D., in said town; and to give at least

SECTION 105. On the day specified in the precept, the jury Jurors and witnesses to be sworn, and talesmen may be summoned.  
so summoned shall be sworn by such justice well and truly to inquire whether any such encroachment has been made as described in the order of the supervisors, and by whom; and the witnesses produced by either party shall be sworn by the justice, and the jury shall hear the proofs and allegations which may be produced and submitted to them; and in case any person summoned as a juror shall not appear, or shall be incompetent, his place may be supplied by a talesman, as in other cases.<sup>1</sup>

SECTION 106. If the jury find that any such encroachment If jury find encroachment has been made, occupant shall remove it.  
has been made by the occupant of the land, or any former occupant thereof, they shall make and subscribe a certificate in writing of the particulars of such encroachments, and by whom made, which shall be filed in the office of the town clerk; and the occupant of the land, whether such encroachment shall have been made by him, or by any former occupant, shall remove the fence, building, or other fixture causing such encroachment, within thirty days after the filing of such certificate, under penalty of fifty cents for each day, after the expiration of the time, during which such encroachment shall continue.

SECTION 107. If the jury find that any encroachment has If jury find en-

three days' notice to the supervisors of said town, and to C. D., of the time and place at which the said freeholders are to meet: and have you then there the names of the freeholders summoned by you, and this precept.

Given under my hand, this — day of —, 18 —.

THOMAS LAWTER, justice of the peace.

<sup>1</sup> *Form of oath of jurors.*

You, and each of you, do solemnly swear, that you will well and truly inquire whether any encroachment has been made, and by whom, on the highways now in question.

*Form of oath of witness.*

You do swear, that the evidence you shall give in relation to the encroachment on the highway now in question, shall be the truth, the whole truth, and nothing but the truth.

<sup>2</sup> *Form of certificate of jury in case of encroachment.*

— county, } ss.  
Town of —,

We, the subscribers, freeholders of said county of —, having been summoned, and assembled, on the day of the date hereof, at the house of R. P., in said town, pursuant to a precept issued by G. H., esq., a justice of the peace of the said county, and having been duly sworn by said justice, on the application of the supervisors of said town, to inquire whether any such encroachment on the public highway in said town, as is specified in the order of the said supervisors, dated the — day of —, last, [or instant,] has been made, and by whom; and having heard the proofs and allegations produced and submitted, do certify, \* that such encroachment has been made by C. D., the present occupant [or, R. F., the former occupant.]

And we hereby certify, that the particulars of such encroachment are as follows, to wit: that said encroachment commences on the north line of said road, at [insert a description:] and that the rail fence along the lands now in the occupation of the said C. D., is upon the public highway, and is an encroachment thereon.

In witness, &c.

[To be signed by all the jury.]



encroachment made, occupant to pay costs.

Fees of officers and witnesses.

If jury find no encroachment, damages and costs shall be paid by supervisors.

When fences shall be removed under above provisions.

Trees fallen from occupied land into highway, by whom to be removed.

Penalty for neglect.

Penalty on person who shall fall tree from enclosed land into highway.

Penalty for obstructing navigable rivers, &c.,

been made as aforesaid, the occupant shall pay the cost of such inquiry; and if the same shall not be paid in ten days, the justice shall issue an execution for the collection thereof, directed to any constable of the county, commanding him to levy such costs, and his fees thereon, of the goods and chattels of such delinquent, and make return thereof to such justice within thirty days from its date; and the justice, constable, jurors and witnesses shall be entitled to the same compensation as for other similar services, in proceedings before justices of the peace.

SECTION 108. If the jury find that no encroachment has been made, they shall so certify, and shall also ascertain and certify the damage which the then occupant shall have sustained by such proceedings, which damages, together with the costs of the proceedings, shall be paid by the supervisors, and shall be a charge in their favor against the town in which they shall have been elected.<sup>1</sup>

SECTION 109. No person shall be required to move any fence, under the above provisions, except between the first day of November and the first day of April, unless the same shall have been made within three months next before the making of the order for the removal thereof.

SECTION 110. If any tree shall fall, or be fallen by any person, from any occupied land into any highway, any person may give notice to the occupant of the land from which such tree shall have fallen, to remove the same within twenty-four hours; and if such tree shall not be removed within that time, but shall continue in such highway, such occupant shall forfeit the sum of fifty cents for every day thereafter, until such tree shall be removed; but the amount so forfeited shall not exceed ten dollars for one tree.

SECTION 111. In case any person shall cut down or fall any tree on enclosed land not occupied by him, so that it shall fall into the highway, unless by the order or consent of the occupant, such person shall pay to the occupant of such land the sum of one dollar for every day the same shall remain in such highway, together with all other damages which such occupant may sustain; but the amount so to be recovered shall not exceed twenty dollars for one tree.

SECTION 112. Whoever shall obstruct the navigation of any river or stream, which now is, or hereafter may be made, navigable, by falling any tree therein, or putting into any river or stream, declared a public highway, any refuse lumber, slabs, or other waste materials, on conviction thereof, shall forfeit the sum of five dollars for any such offense; and shall be further liable for all damages that may accrue on account of such obstruction.

<sup>1</sup> Form of certificate where no encroachment is found. Sec. 93.

\_\_\_\_\_ county. } ss.  
Town of \_\_\_\_\_. }

We, the subscribers, &c., [as in the previous form to the\*, and then continue as follows:] that no such encroachment has been made on the said highway; and we have ascertained and do certify the damages of C. D., the occupant of the land through [or by] whose lands the said highway runs, by reason of the said supervisors' proceedings against him, to be \_\_\_\_\_ dollars.

In witness, &c.

OF THE ERECTION, REPAIRING, AND PRESERVATION OF  
BRIDGES.

SECTION 113. The supervisors in any town in this state are hereby authorized and empowered to levy and collect a tax on all the taxable property of such town, for the purpose of rebuilding and maintaining suitable and permanent bridges across any river, stream, or creek, in any such town, whenever they shall deem it necessary, for the public interest and convenience, to rebuild, repair, or maintain any such bridge: *provided*, that no such tax shall exceed the sum of three hundred dollars for any bridge, and not more than one such tax shall be levied and collected in any one year, in any of the said towns; *and provided further*, that all the supervisors agree in levying and assessing such tax.<sup>1</sup>

Supervisors authorized to levy tax to rebuild and maintain bridges. S. L. 1856, ch. 133.

SECTION 114. Said tax shall be levied and collected whenever any of said board of supervisors shall decide, in the same manner as other town taxes are levied and collected.

Tax levied and collected as other town taxes. Id.

SECTION 115. Whenever it shall appear to the board of supervisors of any county that any one of the towns in such county would be immeasurably burthened by erecting or repairing any necessary bridge or bridges in said town, such board of supervisors may cause such sum to be raised and levied upon the county as will be sufficient to defray the expenses of erecting or repairing such bridge or bridges, or such part of such expense as they may deem proper; and such moneys, when collected, shall be paid to the town treasurer of the town in which the same are to be expended, to be applied by the supervisors of such town to the purposes for which the same were raised.

County supervisors may raise money for erecting or repairing bridges in towns.

SECTION 116. No board of supervisors shall, under the provisions of the preceding section, cause any sum exceeding one thousand dollars to be raised and levied in any county in any one year.

Amount that may be raised.

SECTION 117. The supervisors of any town may put up and maintain, at the expense of their town, in conspicuous places at each end of any bridge in such town, maintained at public charge, and the length of whose span is not less than twenty-five feet, a notice, with the following words in large characters: "One dollar fine for driving or riding on this bridge faster than a walk."

Notices of precaution to be posted on bridges by supervisors.

SECTION 118. Whoever shall ride or drive faster than a walk on any bridge upon which such notice shall have been placed, and shall there be, shall forfeit for every such offense the sum of one dollar.

Fine for riding or driving faster than a walk on bridge.

SECTION 119. Whoever shall willfully injure any bridge, maintained at the public charge, shall, for every such offense, forfeit treble damages; and he may be indicted and punished as provided by law.

Forfeiture of treble damages for injury to bridge.

## MISCELLANEOUS PROVISIONS OF A GENERAL NATURE.

SECTION 120. If any damage shall happen to any person, his Person sustain-

(1) Held in Illinois, that supervisors have no authority to appropriate funds in aid of the construction of toll bridges, or to aid a private individual in the construction of a free bridge. And a bill to enjoin them for so misapplying funds for that purpose, is a proper remedy, and will be sustained.—[*Colton et al. v. Hanchett et al.*, XIII. Ill., 615.]

ing damages from insufficiency of bridge, &c., may recover same of town.

team, carriage, or other property, by reason of the insufficiency or want of repairs of any bridge, or sluiceway or road, in any town in this state, the person sustaining such damages shall have a right to sue for and recover the same against such town, in any court having jurisdiction thereof; and if such damage shall accrue by reason of the insufficiency or want of repairs of a bridge erected or maintained at the expense of two or more towns, the action shall be brought against all the towns liable for the repairs of the same; and upon recovery of judgment the damages and costs shall be paid by such towns in the proportion in which they are liable for such repairs; and the court may, in its discretion, issue execution against each town for its proportion only.<sup>1</sup>

If damage occasioned through neglect of overseer, he shall be liable to town.

SECTION 121. If any such bridge, or sluiceway, or road, shall have been out of repair in consequence of the neglect or default of the overseer of highways of the district in which the same may be situated, then the town against which any judgment shall have been recovered by reason of such defective bridge, or sluiceway, or road, may bring an action against such delinquent overseer, and recover the amount of such judgment.

Trees in highway to belong to owner, but may be used to repair road.

SECTION 122. All trees standing or lying on any land over which any highway shall be laid out, shall be for the proper use of the owner of such land, or person otherwise entitled thereto, except such of them as may be requisite to make or repair the highways or bridges on the same land, or within one mile of the same; but no trees reserved for shade or ornament shall be used for such purpose.

Persons may plant trees on side of highways.

SECTION 123. Any person owning or occupying land adjoining any highway may plant or set out trees on each side of said highway contiguous to his land; which trees shall not be set in the

(1) An action against a town, on the *Rev. Sts.*, c. 25, § 22, to recover damages for an injury received by reason of a defect or want of repair in a highway, which the town is by law obliged to repair, cannot be maintained by a party who goes out of the highway, because of the defect therein, into the adjoining land, and there receives an injury.—[*Tisdale v. Norton*, 8 *Metcalf*, 388.

Obstructions in a highway, though not on the traveled part, are defects for injuries caused, by which towns are responsible under the statute, (*Rev. Sts.*, c. 25, § 22,) whether placed there by the owner of the soil over which the highway is laid, or by others.—[*Show v. Adams*, 1 *Cushing*, 448.

In an action against a town, to recover damages for an injury, alleged to have been caused by a defect in a highway, occasioned by want of a rail or barrier, the town will be liable therefor, if such rail or barrier were necessary for the proper security of travelers, and would have prevented the happening of the injury complained of.

A town is liable for an injury occasioned by a defect in a highway, where the primary cause of the injury is a pure accident, as for example, the failure of some part of a carriage or harness; provided the accident occur without the fault or negligence of the party injured, and be one which common prudence and sagacity could not have foreseen and provided against, and provided also, that the injury would not have been sustained but for the defect in the highway.—[*Palmer v. Andover*, 2 *Cust.*, 300.

Towns are bound to keep the margins of their highways reasonably safe. And, although the town will not be responsible, if a traveler voluntarily diverge from the traveled path and injury result, yet if he be forced into the ditch by accident, and injury ensue by reason of an obstruction lying there, the town will be liable.—[*Cassedy v. Stockbridge*, 21 *Vermont*, 391.

It is only by force of statute that an individual who sustains special damages through neglect of a town to keep a road in repair, can maintain a suit therefor against the town.—[*Baxter v. Winsoski Turnpike Co.*, 22 *Vermont*, 114.

No action lies at common law against a town for damages sustained through defects in highways.—[*Farnum v. Concord*, 2 *N. H.*, 392.

In an action against a town for injuries in consequence of the insufficiency of a bridge, or defects in a highway, it is not necessary for the plaintiff to show the legal establishment of the road, it is only requisite to prove that it was opened and worked as a highway; and was one in fact, and so recognized by the town through its legally constituted agents, in order to make the town liable in damages.—[*Codner v. Bradford*, 8 *Chand. R.*, 291.

highway more than ten feet from the margin thereof; and if any person shall cut down, destroy, or injure any tree that may have been, or shall be, so planted or set out, or which shall have been left on the side of such highway for shade, he shall be liable to treble damages to the owner or occupant of such adjoining lands. Penalty for injury to same.

SECTION 124. Whoever shall willfully destroy, remove, injure, or deface any mile stone or mile board, erected on any highway, or shall willfully injure or deface any inscription or device upon any guide post or guide board on any highway, or remove, or destroy, or injure any such guide post or guide board, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined not exceeding fifty dollars, or imprisoned in the county jail not exceeding three months, in the discretion of the court. Penalty for injuring or removing mile stone or guide board, or defacing inscription thereon.

SECTION 125. Whoever shall injure any highway, by obstructing or diverting any creek, water course, or sluiceway, or by drawing logs or timber on the surface of any road or bridge, or by any other act, shall be liable in treble damages, to be recovered by the overseer of highways of the road district within which the injury was done, in his name of office, to be expended by him in the repair of the roads in his district. Penalty for injuring roads and bridges.

SECTION 126. The provisions of this chapter relating to highways and bridges shall be construed to extend to all parts of the state, except where special provisions, inconsistent therewith, have been or shall be made by law, in relation to particular towns, counties, cities, or villages. Provisions of this chapter to extend to all parts of the state except, &c.

SECTION 127. Whenever any owner or owners, occupant or occupants, of any land or lands bordering upon any public road or highway, excepting a street or alley in a town or village, through which any public road or highway may pass, may wish to plant and cultivate any hedge or live fence, along the margin of his, her, or their lands, it shall be lawful for any such person or persons to set or plant any such hedge or live fence, precisely on the line of the road or public highway, and also to place on the margin of such road a protection fence, not to occupy more than six feet of the margin or edge of such road; and such protection fence, when placed opposite any live fence or hedge, actually set or planted, shall be permitted by the overseer of highways, and all other persons, to remain for the term of seven years: *provided*, that the supervisors of any town may grant permission, in writing, to the owner or owners of any hedge or live fence, to continue such protection fence any term of time which they may deem necessary. The owner or occupant of land bordering on public road may cultivate a hedge or live fence, &c.

#### *Chapter 34, Acts of a general nature of 1858.*

SECTION 1. Section eight of chapter forty-four of the session laws of 1853, (*section ninety of chapter nineteen*), is hereby amended so as to read as follows: The supervisors of each town through which any state road shall pass, may alter the same within the limits of their town in the same manner they are authorized to alter other highways, but they shall not discontinue any such road, unless the road shall lie wholly within said town. Supervisors may alter state roads, but not discontinue unless, &c.

Approved March 24th, 1858.

*Chapter 104, Acts of a general nature of 1858.*

Overseers of  
highways to give  
bonds.

SECTION 1. Each overseer of highways shall, before he enters upon the duties of his office, execute to the board of supervisors of his town, if a majority of said board so require, a bond, to be filed by the town clerk, in such amount as shall be required by said board of supervisors, conditioned for the faithful discharge of the duties of his office and the proper application and payment of all moneys that may come into his hands by virtue of said office as provided by law.<sup>1</sup>

Approved May 15th, 1858.

R. S. 1858.  
CHAP. 34.  
p. 354.

## CHAPTER XXXIV.

## OF THE RELIEF AND SUPPORT OF THE POOR.

## OF THE SUPPORT OF THE POOR BY THEIR RELATIVES AND BY TOWNS.

Towns to sup-  
port poor.

SECTION 1. Every town shall relieve and support all poor and indigent persons lawfully settled therein, whenever they shall stand in need thereof.

Legal settle-  
ments, how ac-  
quired.

SECTION 2. Legal settlements may be acquired in any town, so as to oblige such town to relieve and support the persons acquiring the same, in case they are poor and stand in need of relief, as follows :—

1. A married woman shall always follow and have the settlement of her husband, if he have any within the state; otherwise her own at the time of marriage, and if she then had any settlement it shall not be lost or suspended by the marriage; and in case the wife shall be removed to the place of her settlement and the husband shall want relief, he shall receive it in the place where his wife shall have her settlement.

2. Legitimate children shall follow and have the settlement of their father, if he have any within the state, until they gain a settlement of their own; but if the father have no settlement, they

<sup>1</sup> *Form of bond of overseer of highways.*

Know all men by these presents that we, *William Roe* and *Joseph Wood* of the town of *Grand Rapids*, in the county of *Wood* and state of *Wisconsin*, are held and firmly bound unto the board of supervisors of said town of *Grand Rapids* in the penal sum of ——— dollars, which sum well and truly to be paid we bind ourselves, our heirs, executors, and administrators, and each of them, firmly by these presents; sealed with our seals and dated this ——— day of ——— 18—.

The condition of the above obligation is such that if the above bounden *William Roe* shall faithfully discharge the duties of the office of overseer of highways for district number ——— in said town of *Grand Rapids*, and shall properly apply and pay all moneys that may come into his hands by virtue of his said office as provided by law, then this obligation to be void; otherwise of force.

WILLIAM ROE. [L. S.]  
JOSEPH WOOD. [L. S.]

shall in like manner follow and have the settlement of their mother, if she have any.

3. Illegitimate children shall follow and have the settlement of their mother at the time of their birth, if she then have any within the state; but neither legitimate nor illegitimate children shall gain a settlement by birth in the place where they were born, unless their parent or parents had a settlement therein at the time.

4. Every person of full age who shall have resided in any town in this state one whole year, shall thereby gain a settlement in such town.

5. Every minor whose parent, and every married woman whose husband, has no settlement in this state, who shall have resided one whole year in any town in this state, shall thereby gain a settlement in such town.

6. Every minor who shall be bound as an apprentice to any person, shall, immediately upon such binding, if done in good faith, thereby gain a settlement where his or her master or mistress has a settlement.

7. Every settlement, when once legally acquired, shall continue until it shall be lost or defeated by acquiring a new one in this state, or by voluntary and uninterrupted absence from the town in which such legal settlement shall have been gained, for one whole year or upward; and upon acquiring a new settlement, or upon the happening of such voluntary and uninterrupted absence, all former settlements shall be defeated and lost.

The provisions of this section shall apply to cases of settlements begun to be acquired, lost, or defeated, before the provisions of this chapter shall go into effect, as well as after.

To what cases this section to apply.

SECTION 3. But no residence of a person in any town, while supported therein as a pauper, shall operate to give such person a settlement in such town.

Residence as a pauper not to give settlement.

SECTION 4. The supervisors in each town shall have the oversight and care of all poor persons in their town, so long as they remain a town charge; and it shall be their duty to see that they are properly relieved and taken care of in the manner required in this chapter.

Town supervisors to have charge of the poor.

SECTION 5. The father, mother, and children, being of sufficient ability, of any poor person who is blind, old, lame, impotent, or decrepit, so as to be unable to maintain himself, shall, at their own charge, relieve and maintain such poor person, in such manner as shall be approved by the supervisors of the town where such person may be.

What relatives to support poor persons.

SECTION 6. Upon the failure of any relative to relieve and maintain any such poor person, it shall be the duty of the supervisors of the town where such poor person may be, to apply to the judge of the county court where such relative may reside, for an order to compel such relief; of which application at least fourteen days' notice in writing shall be given, by serving the same personally, or by leaving the same at the dwelling place of the person to whom it may be directed, in case of his absence therefrom, with some person of suitable age.

Proceedings to compel relatives to support poor persons.

Court how to proceed, and what order may make.

**SECTION 7.** The court to which such application may be made, shall proceed in a summary way to hear the proofs and allegations of the parties, and shall order such of the relatives aforesaid of such poor person as appear to be of sufficient ability, to relieve and maintain such person, and shall therein specify the sum which will be sufficient for the support of such poor person, to be paid weekly.

Order in which relatives shall support poor persons.

**SECTION 8.** The said court shall also, in such order, direct the relative or relatives who shall perform that duty, in the following order: the father shall first be required to maintain such poor person, if of sufficient ability; if there be no father, or if he be not of sufficient ability, then the children of such poor person; if there be no such children, or if they be not of sufficient ability, then the mother, if she be able to do so.

Two or more relatives may be ordered to support poor person, &c.

**SECTION 9.** If it shall appear to the satisfaction of the court, that any such relative is unable wholly to maintain such poor person, but is able to contribute toward his support, the said court may, in its discretion, direct two or more such relatives to maintain such poor person, and shall prescribe the proportion which each shall contribute for that purpose; and if it shall appear to the satisfaction of the said court that the relatives liable as aforesaid, are not of sufficient ability wholly to maintain such poor person, but are able to contribute something therefor, then the said court shall direct the sum, in proportion to their ability, which such relatives shall severally pay weekly for that purpose.

Order what to specify; may be varied.

**SECTION 10.** Such order may specify the time during which the relatives aforesaid shall maintain such poor person, or during which any of the said sums so directed by the court shall be paid, or it may be indefinite, or until the further order of the court; and the said court may from time to time vary such order, whenever circumstances shall require it, on the application of any relative affected thereby, or of any supervisor of the town in which such poor person may be, upon fourteen days' notice being given in the manner aforesaid.

Costs of proceedings to be paid by relatives; obedience to orders how enforced.

**SECTION 11.** The costs and expenses of such application shall be ascertained by the court and paid by the relatives against whom any order may be made; and the payment thereof, and obedience to the order of maintenance, and to any order for the payment of money, may be enforced by process of attachment.

Suits may be maintained against relatives by supervisors for neglect to comply with order.

**SECTION 12.** If any relative who shall have been required by such order to relieve or maintain any poor person, shall neglect to do so in such manner as shall be approved by the supervisors of the town where such poor person may be, and shall neglect to pay to the said supervisors, weekly, the sum prescribed by the court for the support of such poor person, the said supervisors may maintain an action against such relative, as for moneys paid, laid out, and expended, and shall recover therein the sum so prescribed by the said court, for every week the said order shall have been disobeyed, up to the time of such recovery, with costs of suit, for the use of the poor.

Absconding father, mother, or husband, how

**SECTION 13.** Whenever the father, or mother, being a widow or living separate from her husband, shall abscond or be about to

abscond from his or her children, or a husband from his wife, or when such father, mother, or husband shall be about permanently to remove from the town in which he or she may reside, leaving a wife or children, or both, chargeable, or likely to become chargeable upon the public for their support, the supervisors of the town where such wife or children may be, may apply to any two justices of the peace of any county in which any estate, real or personal, of the said father, mother, or husband, may be situated, for a warrant to seize the same.

SECTION 14. Upon due proof of the facts as aforesaid, the justices shall issue their warrant, authorizing the said supervisors to take and seize the goods, chattels, effects, things in action, and the lands and tenements of the person so absconding; and the supervisors, by virtue of such warrant, may seize and take the said property, things in action, and effects, wherever the same may be found in the same county; and they shall be vested with all the right and title to the said property, things in action, and effects, which the person so absconding had at the time of his or her departure.

SECTION 15. All sales and transfers of any personal property left in the county from which such person absconded, made by him or her after the issuing of such warrants, whether in payment of an antecedent debt or for a new consideration, shall be absolutely void, and the said supervisors shall immediately make an inventory of the property, things in action, and effects, so seized by them, and return the same, with the proceedings, to the next county court for the county in which such supervisors reside, there to be filed.

SECTION 16. The said county court, upon inquiring into the facts and circumstances of the case, may confirm the said warrant and seizure, or may discharge the same; and if the same is confirmed, such court shall, from time to time, direct what part of the personal property shall be sold and how much of the proceeds of such sale, and of the rents and profits of the real estate, shall be applied toward the maintenance of the wife or children of the person so absconding.

SECTION 17. The supervisors shall sell, at public vendue, the property so ordered to be sold, and receive the rents and profits of the real estate of the person so absconding, and shall apply the same to the maintenance and support of the wife or children of the person so absconded, and they shall account to the said county court for all moneys so received by them, and for the application thereof, from time to time, and may be compelled by said court to render such account at any time.

SECTION 18. If the person so absconding shall return, and support the wife or children so abandoned, or give security to the supervisors of the town, to be approved by two justices of the peace of such town, that the wife or children so abandoned shall not become or thereafter be chargeable to the town, then such warrant shall be discharged by an order of such justices, and the property taken by virtue thereof and remaining unappropriated, or the unappropriated proceeds thereof, after deducting the expenses of the proceedings as aforesaid, shall be restored to the party.

proceeded against.  
S. L., 1850, ch. 229.

How warrant may be issued, and their goods, lands, &c., seized.

Sales of personal property after warrant issued, void.

Supervisors to make inventory and return same with proceedings.

County court how to proceed upon return of warrant, &c.

Duty of supervisors in selling and applying property.

To account for same.

When property to be restored to person absconding.



When supervisors may bind out minors; indentures how executed, &c.

**SECTION 19.** When any minor shall become or be likely to become chargeable to any town, either because of being an orphan, or because the parents or other relations are unable or refuse to support such minor, it shall be the duty of the supervisors of such town to bind such minor as an apprentice to some respectable householder of the county in which such town is situate, by written indenture, which shall bind such minor to serve as an apprentice, and shall be executed in like manner, and shall be of the same tenor and effect, as indentures executed pursuant to the provisions of the chapter entitled "of masters and apprentices;" and every minor so bound, and the supervisors binding him, and his master, shall be subject to all the provisions of said chapter.

Relief to poor persons not having settlement, how granted, &c.

**SECTION 20.** When any non-resident stranger, or any other person, shall be taken sick, lame, or become otherwise disabled, in any town in this state, having no legal settlement therein, and not having money or property to pay his board, attendance, and medical aid, it shall be the duty of the supervisors of such town, on complaint being made, to give or order to be given such assistance to such poor person, as they may deem just and necessary; and if said poor person shall die, the said supervisors shall give or cause to be given to such person, a decent burial; and the said supervisors shall make such allowance for board, nursing, medical aid, or burial expenses, as they shall deem just and equitable, and order the same to be paid out of the town treasury.

Support of poor persons not having a settlement, to be a charge against the county.

**SECTION 21.** If any such poor person shall not have a legal settlement in said town, the expenses incurred by the town for his relief or maintenance shall be a charge against the county in which such town is situated, and shall be audited by the county board of supervisors, and paid out of the county treasury; unless the town in which such poor person has a legal settlement shall pay the expenses for his relief and maintenance.

Account for such support to be verified by affidavit, &c.

**SECTION 22.** Every account for the relief or maintenance of any poor person, presented to the county board of supervisors to be audited, as mentioned in the preceding section, shall be verified by the affidavit of one or more of the supervisors of the town in which such relief or maintenance was granted; and the said board of supervisors, before auditing and allowing such account, may require such reasonable proof as they may deem necessary, that such account is a legal county charge.

Removing or enticing pauper from one town to another, a misdemeanor.

**SECTION 23.** Any person who shall send, convey, transport, remove, or bring, or who shall cause or procure to be sent, carried, transported, removed, or brought, any pauper, from any town into any other town, knowing him to be a pauper, without legal authority, and there leave such pauper, or who shall entice such pauper so to remove, with intent to make any such town, to which the removal shall be made, chargeable with the support of such pauper, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be imprisoned in the county jail not exceeding one year, or fined not exceeding three hundred dollars, or both, in the discretion of the court.

Town in which a pauper has a settlement liable to

**SECTION 24.** If any person shall become a charge to any town for his support, and shall have no legal settlement therein, the

supervisors of the town in which such person may have a legal settlement, shall be liable for the support of such poor person. town supporting him.

SECTION 25. In all cases mentioned in the two preceding sections, when any pauper shall be brought, removed, or enticed into any town, or any person shall have become chargeable in such town, not having a legal settlement therein, such persons shall be relieved and provided for by the supervisors of the town where they may be; and the said supervisors may give notice to the supervisors, or any one of them, of the town from which any such pauper was removed, brought, or enticed, or of the town in which any such person, who shall have become chargeable, has a legal settlement, informing such supervisors thereof, and requiring them forthwith to take charge of such person. Pauper to be relieved in the town where he may be, but supervisors to give notice to town liable.

SECTION 26. The supervisors to whom such notice may be directed, shall, within thirty days after the service thereof, take and remove such poor person to their town, and pay the expenses incurred in giving such notice, and in maintaining such poor person, from the time of his becoming a charge to the town in which he is maintained. Duty of supervisors of town to whom notice given.

SECTION 27. If the said supervisors shall omit to take and remove such poor person, and pay such expenses, within the said thirty days, they and their successors in office shall be liable for all the expenses of maintaining such poor person, so long as he shall remain a public charge; and the supervisors of the town where such poor person may be, may from time to time sue for and recover the same, with costs: *provided*, that if the supervisors receiving such notice, shall, within said thirty days, deny the allegations contained in such notice, and notify the supervisors giving the same of such denial, an action for such expenses shall be commenced within three months after such denial, or be forever barred, and no action shall thereafter be brought for such expenses. Liability of supervisors if they neglect to remove pauper, &c. If supervisors deny the allegation of the notice, &c., suit to be brought, &c.

SECTION 28. Any person who shall bring or remove, or cause to be brought or removed, any poor or indigent person, from any place without this state, into any town within it, with intent to make such town chargeable with the support of such poor person, shall forfeit and pay fifty dollars, to be recovered before any justice of the peace of the town into which such poor person shall be brought, or in which the offender may be; and shall also be obliged to convey such poor person out of the state, or support him at his own expense. Penalty for bringing pauper into this state.

SECTION 29. It shall be lawful for the justice or court before whom such person shall be convicted for a violation of the provisions of the preceding section, to require of such person satisfactory security that he will, within a reasonable time to be named by the justice or court, transport such poor person out of the state, or indemnify such town for all charges and expenses which have been or may be incurred in the support of such poor person; and if such person shall neglect or refuse to give such security when required, it shall be the duty of the justice or court to commit him to the county jail for a term not exceeding three months. Court may require security from person offending to transport pauper out of state, &c.

SECTION 30. The supervisors of the several towns shall present Supervisors to re-

port to town meeting the expenditures for support of poor, &c.

at each annual town meeting therein, a report showing the amount of money expended by them for the relief and support of poor persons in such town during the then preceding year, the name of each poor person or family relieved, and the amount appropriated for the support of each, together with all such other items of expenditure incurred agreeably to the provisions of this chapter; they shall also in said report present an estimate of such sum as in their opinion will be required for the support of the poor in such town for the then ensuing year.

Appeals from decisions of justices upon proceedings under this chapter allowed.

SECTION 31. Every decision of any justice of the peace, in any matter, proceeding, or action, authorized by this chapter, may be appealed from in like manner, and under like regulations, as in other cases.

\* \* \* \* \*

### *Chapter 71, Acts of general nature of 1858.*

Expenses of indigent insane persons to be defrayed by counties.

SECTION 1. The county board of supervisors of each county in this state, is hereby authorized and required to audit the accounts hereafter incurred for the relief or maintenance of all indigent insane persons within their respective counties as hereinafter provided.

County judge upon satisfactory evidence to issue order to sheriff to confine such insane person.

SECTION 2. Whenever it shall appear to the satisfaction of any county judge, by the petition of a majority of the board of supervisors of any town, or a majority of the common council or board of aldermen of any city, within his county, that the public safety requires the close custody of any insane person or lunatic, having a legal settlement in the town or city represented by the petition, it shall be the duty of the said judge to make and deliver to the sheriff of the proper county an order in writing, requiring the sheriff to forthwith take and confine such insane person or lunatic in some proper place, as he may order and direct. Such petition shall contain a statement of all the facts in the case, so that the judge may determine from the evidence before him whether it is safe to allow such insane person or lunatic person to be at large. Such insane person or lunatic, when thus confined by the order of the judge, shall be subject to the direction of the said judge, and shall receive such care, attention, and treatment as the judge may deem proper and necessary. All expenses incurred in confining, taking care of, or attending upon such person, shall be audited by the county board of supervisors, when properly certified to them by the judge having the care and direction of such person, and when so audited shall be paid out of the county treasury.

Subject to direction of judge.

All expenses to be paid by county.

Approved May 1st, 1858.

# CHAPTER XXXV.

## OF EXCISE.

R. S. 1858.  
CHAP. 35.  
p. 362.

SECTION 1. The board of supervisors of the several towns, and the aldermen of any incorporated city, and the board of trustees of any incorporated village within this state, may at any regular or special meeting of the board, grant license to as many persons as they may deem proper, to keep groceries, saloons, shops, or places of any name whatever, within the limits of their respective towns, cities, or villages, for the sale of strong, spirituous, ardent, or intoxicating liquors, to be drunk on the premises, in a quantity less than one gallon. The sum to be paid for such license by the person applying therefor, shall be not less than ten nor more than one hundred dollars, at the discretion of the board granting such license, and the license so granted shall remain and be in force for and during the space of twelve months from and after the date thereof, unless sooner revoked by the board granting such license.

Board of supervisors, &c., may grant license to sell liquor to be drunk on premises.

S. L. 1851, ch. 162.

S. L. 1852, ch. 427.

SECTION 2. The board of supervisors, board of aldermen, or board of trustees may also grant licenses to as many persons as they may deem proper, within the limits of their respective towns, cities, or villages, to sell strong, spirituous, ardent, or intoxicating drinks or liquors, not to be drunk within their houses or on their premises. The sum to be paid for such license for wholesaling spirituous or intoxicating liquors or drinks, by the person applying therefor, shall be not less than ten nor more than forty dollars, at the discretion of the board granting such license, and such license shall be in force for the space of twelve months from the date thereof, unless sooner revoked by the board granting the same.

May license to sell not to be drunk on premises.

S. L. 1851, ch. 162.

S. L. 1852, ch. 427.

SECTION 3. The said license shall be sealed and attested by the town clerk, or the clerk of the board of aldermen, or the clerk of the board of trustees, (as the case may be,) granting the same; but \*they shall in no case be issued to the applicant until such applicant shall produce to the said clerk proper evidence, by receipt or otherwise, that he has paid into the town, city, or village treasury the sum of money hereinbefore fixed and required to be paid therefor.

License to be sealed and attested by town clerk, &c., but not issued until license paid.

S. L. 1851, ch. 162.

SECTION 4. No license shall be granted under the provisions of this chapter until the person applying therefor shall have produced and filed with the said town, city, or village clerk, a good and sufficient bond, in the penal sum of five hundred dollars, with two or more good and sufficient sureties, who shall severally justify their responsibility over and above all debts and exemptions, on oath or affidavit, which oath or affidavit shall be attached to and filed with the bond, which bond shall be executed to the town, city, or village treasurer, as the case may be, and when the sureties shall have so justified, shall be approved by the board granting such license, conditioned that such applicant will, during the

License not to be granted until bond given.

Id.

Condition of  
bond.

continuance of his license, keep and maintain an orderly and well regulated house, that he will permit no gambling with cards, or dice, or any other device or implements used for that purpose, within his grocery, saloon, shop, or building of any name whatsoever, kept by him, or within any out-house, yard, or shed appertaining to the same, and that he will observe and obey all requirements of said board of supervisors, or board of aldermen, or board of trustees, or any member thereof, made in pursuance of this chapter.

Persons selling  
without license  
guilty of misde-  
meanor; punish-  
ment therefor.  
S. L. 1861, ch.  
162.

SECTION 5. If any person shall vend, sell, or in any way deal or traffic in, or for the purpose of evading this chapter, give away, any spirituous, ardent, or intoxicating liquors or drinks in any quantity whatsoever, without first having obtained license therefor according to the provisions of this chapter, he shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished therefor by a fine of not less than ten nor more than forty dollars, and costs of suit, [*to be paid*] within twenty-four hours after the same have been imposed upon him, (during which time he shall remain in the custody of the officers,) or by imprisonment in the county jail of the proper county for the space of sixty days, unless he shall be discharged therefrom before the expiration of said term, by payment of the aforesaid fine and all costs and jail fees occasioned by his prosecution and imprisonment.

Justices to have  
jurisdiction of  
offenses arising  
in county.

- Id.

SECTION 6. Justices of the peace shall have power to hold a court, to hear, try, and determine all offenses against or growing out of the provisions of this chapter and arising within their respective counties: *provided*, that the accused party shall not be deprived of a jury trial, nor of his right of appeal as in other cases of tort.

Upon complaint,  
justice to issue  
warrant of arrest.  
Id.

SECTION 7. Upon complaint made to any justice of the peace by any person that he knows, or has good reason to believe, that [*an*] offense against this chapter, or any violation thereof, has been committed, he shall examine the complainant upon oath, and he shall reduce such complaint to writing, and cause the same to be subscribed by the person complaining. And if it shall appear to such justice that there is reasonable cause to believe that such offense has been committed, he shall immediately issue his warrant, reciting therein the substance of such complaint, and requiring the officer, to whom such warrant shall be directed, forthwith to arrest the accused, and bring him before such justice, to be dealt with according to law; and the same warrant may require the officer to summon such persons as shall be therein named, to appear at the trial to give evidence.

District attorney  
to conduct suit.  
Id.

SECTION 8. It shall be the duty of the district attorney of the proper county, on notice given to him by the justice of the peace before whom any such complaint shall be made, or by the complainant himself, to attend the trial before such justice, and to conduct the same on behalf of the state.

What officers  
must make com-  
plaint for  
offenses under

SECTION 9. It shall be the duty of each [*member*] of the board of supervisors of the town, and of every member of the board of aldermen, and of every member of the board of trustees, as also

of every justice of the peace, marshal, deputy marshal, and constable of any town, ward, or village, who shall know of his own knowledge, or be credibly informed, that any offense has been committed against the provisions of this chapter, to report and make complaint against the person so violating any of the provisions thereof, within their respective towns, wards, or villages, before some justice of the peace of their county, city, or village; and if any such supervisor, alderman, justice of the peace, trustee, constable, marshal, or deputy marshal shall neglect or refuse to report and make complaint of any violation or offense against this chapter, of which he shall have knowledge as aforesaid, he shall be punished by fine in the sum of twenty-five dollars for each such neglect or refusal, to be collected in an action, to be commenced by the town treasurer of the town, or the treasurer of the board of aldermen, village, or city, against him therefor.

this chapter.  
S. L. 1861, ch.  
162.

Penalty for neglect.

SECTION 10. When any person shall, by excessive drinking of spirituous, ardent, or intoxicating liquors or drinks, so misspend, waste, or lessen his estate or property, as thereby either to expose himself or his family to want or indigence, or the town, city, ward, or village to which he belongs, to expense for the maintenance of himself or his family, or shall so habitually indulge himself in the use of spirituous, intoxicating, or ardent liquors or drinks, as thereby greatly to injure his health, or endanger the loss thereof, or to endanger the personal safety and comfort of his family, or any member thereof, the board of supervisors of the town in which such spendthrift lives, or any member thereof, or the board of aldermen of the city in which he lives, or any member thereof, or the board of trustees of any village, or any member thereof, shall, in writing under his or their hands, forbid all persons licensed under this chapter, to sell or give away to him any ardent, spirituous, or intoxicating liquors or drinks of any kind, for the space of one year, and said boards, or any member thereof, may in like manner forbid the selling of any such liquors or drinks to the said spendthrift by any licensed person of any other town, or ward, or city, or village, to which the spendthrift may resort for the same.

Certain officers may forbid the sale of liquor to drunkard or spendthrift.

Id.

SECTION 11. The said board of supervisors, or board of aldermen, or trustees, or any member of such boards, shall, in the same manner, from year to year, renew such prohibition, as to all such persons as have not, in their or his opinion, reformed within the year; and if any person licensed under the provisions of this chapter shall, during such prohibition, sell or give away to any such prohibited person any such ardent, spirituous, or intoxicating liquors or drinks of any kind whatsoever, he shall forfeit for each offense the sum of fifty dollars, to be collected in an action by the town, village, or city treasurer, against such licensed person and his sureties, on his bond, in cases where such bond is given in pursuance of this chapter, or in cases where no bond is required or given, then in an action against such licensed person, in the name of the town or village treasurer, as the case may be.

Board, &c., may renew prohibition; penalty for furnishing liquor to prohibited person.

Id.

SECTION 12. When the sale or giving away of spirituous, intoxicating, or ardent liquors or drinks shall have been prohibited

Further penalty by imprisonment.

S. L. 1851, ch.  
162.

to any such spendthrift in pursuance of this chapter, if any person shall, with a knowledge of said prohibition, give, sell, purchase, or procure for or in behalf of such prohibited person, or for his use, any such liquors or drinks, he shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of fifty dollars, or in default of immediate payment of such fine when legally imposed, by imprisonment in the county jail for the space of thirty days, unless sooner discharged by payment of such fine and all costs and fees up to the date of his discharge.

Upon complaint  
that licensed per-  
son keeps disor-  
derly house,  
board to sum-  
mon person, &c.  
Id.

SECTION 13. Upon any complaint made in writing under oath, by any two respectable persons, residents of the town, village, or ward in which any licensed person may keep his shop, grocery, saloon, or place for the sale of any liquors or drinks, under the provisions of this chapter, and upon filing the same with the clerk of the town, city, or village, setting forth therein that any such licensed person keeps or maintains a disorderly, riotous, indecent, or improper house; or that he suffers, allows, or permits gambling in his house with cards, dice, or with any device or implements, or in any manner whatever, the board of supervisors, or the board of aldermen, or the board of trustees, (as the case may be,) shall issue their summons, under the hand of their clerk, directed to any constable of the town, city, or village, commanding the person so complained of, to be and appear before such board, on a certain day to be therein named, which day shall be not less than three nor more than ten days, to show cause why his license shall not be immediately revoked and canceled.

If person shall  
not appear  
complaint to be  
taken as true  
and license  
revoked.

Id.

SECTION 14. If such accused person shall not appear as required by the summons mentioned in the foregoing section, to show cause in answer to such complaint, the board issuing the same shall take such complaint and the charges therein made to be true, and if they shall deem the allegations contained in said complaint to be sufficient, they shall immediately cause said license by them before granted, to be wholly revoked and annulled, which action of the board shall be entered by their clerk on the books or journal of the board, and they shall cause proper notice to be given to the person whose license shall be so revoked; but if such person shall appear, he shall be allowed to traverse and deny the matters charged in such complaint, and upon such issue made, each party shall be allowed to produce witnesses as in other cases, and to be heard by counsel; if upon such hearing the board shall find the complaint to be true, they shall immediately revoke the license theretofore granted to the accused party; but if they shall find the same not to be true, after proofs adduced, they shall discharge the person complained of free of all costs, and the costs shall be paid by the person making such complaint, for the payment of which costs, said board shall take good and sufficient security of the complainants, before issuing their summons as aforesaid: *provided*, that in no case where such license shall be revoked and taken away from any person, shall it be lawful for such board to grant another license to the same person within the time of twelve months from the date of such revocation; *and provided further*, that no part of the money paid by such person for the license so revoked shall be refunded to him.

If he appear,  
hearing may be  
had, and if com-  
plaint found true  
license to be  
revoked.

SECTION 15. The board of supervisors of any town may grant licenses to sell intoxicating or spirituous liquors or drinks, in any quantity less than one gallon, to such persons as keep houses of public entertainment on any public highway, for the benefit and accommodation of travelers, in such cases as the said board shall deem the granting of such licenses expedient and proper. The sum to be paid for such license shall not be less than ten nor more than forty dollars, at the discretion of said board, and before the same shall be granted to any person, he shall make and file with the clerk of the town, a written affidavit that he is keeping a house of public entertainment for travelers, commonly known as a tavern or hotel, and that he desires such license only for the reason that he is keeping such house of public entertainment, and for the accommodation of the traveling public: *provided*, that no such license shall be granted until the applicant shall have executed, produced, and filed his bond in accordance with section four of this chapter, and that he shall be in all respects subject to the several requirements and penalties hereinbefore made, in the same manner as other licensed persons.

Board of supervisors may grant tavern licenses if they deem proper.  
S. L. 1851, ch. 162.

Applicant must give bond as herein provided.

SECTION 16. All moneys derived from licenses granted under the provisions of this chapter shall be kept separate and distinct from other moneys by the town, city, or village treasurer, and the same shall be applied solely for the purpose of defraying the pauper expenses of such town, city, or village, unless the amount received shall exceed the sum required for such objects, in which case, the remainder shall be placed in the general treasury of the city, town, or village, and appropriated in the same manner as other moneys; and in counties where the county system of supporting paupers has been adopted, all moneys derived from licenses shall be paid by the treasurers of said towns, cities, and villages into the treasury of the county semi-annually, and shall be applied solely for the purpose of defraying the pauper expenses of said counties.

Moneys to be applied to support of poor.

To be paid into county treasury in certain cases.

## CHAPTER XXXVII.

### OF THE SUPPORT OF BASTARDS.

R. S. 1858.  
CHAP. 37.  
p. 368.

SECTION 11. If any female shall be delivered of a bastard child which shall be a public charge, or likely to become a public charge, or shall be pregnant of a child likely to be born a bastard and to become a public charge, the board of supervisors of the town where such female shall reside, or any of them, may, upon application for aid in supporting such child by the mother thereof, or if they deem proper without such application, apply to some justice of the peace of the same county, to make inquiry into the facts and circumstances of the case.

When town supervisors may apply to justice to inquire into case of bastardy

SECTION 12. Such justice shall examine such female on oath, Justice to ex-



amine female  
and issue war-  
rant; how war-  
rant executed  
&c.

respecting the father of such child, the time when and the place where she was begotten with child, and such other circumstances as the justice may deem necessary for the discovery of the truth; and shall thereupon issue his warrant to apprehend the reputed father, and the same proceedings shall be thereupon had as if complaint had been made by such female as prescribed in the foregoing provisions of this chapter, and with the like effect; any warrant issued under the provisions of this chapter may be executed in any part of this state, and in all cases said supervisors and the accused may require the attendance of such female to testify, the same as witnesses in other cases.

Supervisors may  
compromise with  
putative father.

SECTION 13. The supervisors of any town in this state shall have power to make such compromise and arrangement with the putative father of any bastard child in such town, relative to the support of such child, as they shall deem equitable and just, and thereupon may discharge such putative father from all liability for the support of such bastard.

## CHAPTER XXXIX.

### OF PUBLIC SHOWS AND EXHIBITIONS.

R. S. 1868.  
CHAP. 89.  
p. 371.

Town board may  
license and regu-  
late shows and  
exhibitions.

SECTION 1. The town board of any town, at any meeting held for that purpose, may license theatrical exhibitions, public shows, and such other exhibitions as they may deem proper, to which admission is obtained on payment of money, upon such terms and conditions as they shall think reasonable, and may regulate the same in such manner as they shall think necessary for the preservation of order and decorum, and to prevent any disturbance to the public peace; but no such license shall be in force for a longer time than the officers granting the same shall have been elected to office.

Penalty for set-  
ting up show or  
exhibition with-  
out or contrary  
to license.

SECTION 2. Any person who shall set up or exhibit any such exhibition or show, without a license first obtained as provided in the preceding section, or contrary to the terms and conditions of such license, or while such license is suspended, shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding two hundred dollars.

The authorities  
of cities or  
villages may  
grant licenses.

SECTION 3. Nothing contained in this chapter shall be construed as preventing the board of trustees of any incorporated village, or the proper authorities of any incorporated city, from licensing such theatrical exhibition, public show, or other exhibition, in pursuance of the authority granted by the charter of such village or city, respectively, or the acts under which they may be incorporated, and agreeably to the ordinances and by-laws made in pursuance of the provisions of such charter or act of incorporation.

*Chapter 96, Acts of a general nature of 1858.*

SECTION 1. No law of this state requiring a license for public shows and exhibitions, where admission is gained upon the payment of money, shall be construed to require license from any city, village, or town authority, for lectures on scientific, moral, or literary subjects, or for concerts of music, if exclusively for the above specified object.

License not to be required for lectures and concerts.

Approved May 15th, 1858.

## CHAPTER XLIII.

## OF STRAYS, AND LOST MONEY AND GOODS.

R. S. 1858.  
CHAP. 43.  
p. 375.

SECTION 1. No person shall take up any stray, except horses and mules, unless such person shall be at the time a resident of the same town wherein such stray shall be found, nor unless such stray shall be found upon the lands owned or occupied by the finder.

Who may take up strays.

SECTION 2. Any person taking up a stray shall within seven days thereafter, notify the owner thereof, if to him known, and request such owner to pay all reasonable charges, and take such stray away.

Within what time notice to be given to owner.

SECTION 3. If the owner of any stray be unknown, the finder shall, within ten days after taking up the same, file a notice thereof with the town clerk of the town, and if the stray or strays so taken up are of the value of less than five dollars, he shall also post up notices of the taking up of such stray, in two or more public places in such town; but if the stray or strays so taken up are of the value of more than five dollars, he shall cause such notice to be published in some newspaper of the county, for four weeks successively, if one be printed therein; if there be none, then by posting up written notices in three of the most public places in the county; all said notices shall contain a brief description of the stray, describing the same by giving marks, natural and artificial, as near as practicable, the name and residence of the finder, and as near as may be, the time at which the same was taken up; the said town clerk shall transmit a copy of every such notice to the clerk of the board of county supervisors.<sup>1</sup>

How notice is to be given if owner of stray is unknown.

<sup>1</sup> Form of notice by finder of stray, to be filed with town clerk.

To S. S. Burleson, town clerk of the town of Pepin.

You will take notice, that on or about the — day of —, 18—, one chestnut horse, of the age of seven years, or thereabouts, and marked with a star in his forehead, strayed upon my land, [or, upon land occupied by me,] in the town of —, and now remains thereupon; and that I reside in the said town of —.

Dated the — day of —, 18—.

WM. DEXTER.

*Form of notice of taking up a stray.*

STRAY NOTICE.

Taken up by the subscriber, residing in the town of —, on land owned

When value of  
stray is ten dol-  
lars, appraisal to  
be made and  
filed.

SECTION 4. Every finder of a stray or strays, which when taken up are of the value of ten dollars or more, shall, within one month after taking up the same, procure an appraisal thereof by a justice of the peace of his town, which appraisal shall be certified to by such justice, and, within the time before mentioned, filed in the office of the town clerk of such town; and he shall pay to such justice fifty cents for such appraisal and certificate and six cents for every mile necessarily traveled in such service.<sup>1</sup>

Owner may have  
stray restored  
within one year.

SECTION 5. If the owner or person entitled to the possession of any stray shall appear at any time within one year after the notice is filed with the town clerk as aforesaid, and make out his right thereto, he shall have such stray restored to him, upon paying all lawful charges which have been incurred in relation to the same.<sup>2</sup>

If owner and  
finder cannot  
agree upon  
amount of  
charges, a jus-  
tice shall settle  
same.

SECTION 6. If the owner and the finder of any stray cannot agree upon the amount of such charges, or for the use of such stray, either party may make application to any justice of the peace of the town where such stray was taken up, to settle the same, and the party making such application shall give notice thereof to the other party; and if any amount shall be found due to the finder by the said justice, over the value of the use of such stray, the same shall be a lien on said stray until paid by the owner, and the costs of such adjudication shall abide the decision of the justice.

When stray to  
be the property  
of finder without  
sale.

SECTION 7. If the owner or person entitled to the possession of any stray shall not appear and make out his title thereto, and

[or occupied] by him in said town, on or about the — day of —, 18—, one chestnut horse with a star in his forehead, and about seven years old.

Dated at —, this — day of —, 18—.

A. B.

<sup>1</sup> Form of certificate of appraisal by justice.

Wood county, }  
Town of Grand Rapids. } ss.

Whereas A. B., residing in said town, has made application to the undersigned, a justice of the peace in said town, to appraise one chestnut horse about seven years old, with a star in his forehead, by him the said A. B., taken up as a stray: now therefore, having viewed the said horse, I do appraise him to be worth the sum of seventy dollars.

Given under my hand, this — day of —, 18—.

J. L. MASHKE, justice of the peace.

Form of notice of sale where stray is not redeemed.

#### PUBLIC NOTICE.

By virtue of the statute in such case made and provided, I shall expose to sale at public auction to the highest bidder, on the — day of — instant, [or, next,] at — o'clock in the — noon, at the house of R. F., in —, one chestnut horse of the age of seven years, or thereabouts, and marked with a star in the forehead, the same being a stray found upon land owned [or, occupied,] by A. B., residing in the town of —, and remaining unredeemed according to law.

Dated the — day of —, 18—.

C. D., constable.

(2) Section 5, of Chapter 38, of the revised statutes (1849) gives a lien upon an estray to the taker up, for his lawful charges, upon his compliance with the requirements of the statute.—*Ford vs. Ford*, 3 Wis. R., 389.

pay the charges thereon, within one year from the time the notice is filed with the town clerk as aforesaid, and if such stray shall not have been appraised at a greater value than ten dollars, the finder shall have a perfect title to the same; but if the appraised value of such stray shall have been adjudged to be more than ten dollars, as provided in the fourth section of this chapter, such stray shall be sold at the request of the finder, by any constable of the town, at public auction, upon first giving public notice thereof in writing, by posting up the same in three of the most public places in such town, at least ten days before such sale, and the finder may bid therefor at such sale; and after deducting all the lawful charges of the finder as aforesaid, and the fees of the constable, which shall be the same as upon a sale on an execution, one-half of the remaining proceeds of such sale shall be deposited in the treasury of the town, to be disposed of in such manner as the town may direct, and the other half shall belong to the finder.

When stray shall be sold, and how, and how proceeds disposed of.

SECTION 8. If any person shall, without the consent of the finder, take away any stray taken up pursuant to the provisions of this chapter, without first paying all the lawful charges incurred in relation to the same, he shall be liable to the finder for the value of such stray.

Penalty on any person who shall take stray without consent of finder, &c.

SECTION 9. If the finder of any stray shall neglect to cause the same to be advertised, or a notice thereof to be posted up, or if he shall neglect to procure the appraisal of any stray which shall be of the value of ten dollars or more, or if he shall neglect to perform any of the duties required of him in this chapter, he shall be precluded from acquiring any right of property in such stray by the provisions of this chapter, or receiving any damages or charges for keeping the same.

Penalty on finder for neglect to advertise or procure appraisal.

#### OF LOST MONEY AND GOODS.

SECTION 10. If any person shall find any money or goods of the value of three dollars or more, and if the owner thereof be unknown, such person shall, within five days after finding such money or goods, give notice thereof in writing to the town clerk of the town in which such property was found, and shall also, within said five days, cause a notice thereof to be posted up in two public places in the same town.

When and how the finder of money or goods to give notice thereof.

SECTION 11. Every finder of lost goods, of the value of ten dollars or more, shall, in addition to the requirements in the preceding section, within fifteen days after finding the same, cause notice thereof to be published in a newspaper printed in the county, if there be one published therein; if there be none, then such notices shall be posted up in three of the most public places in the county; and if no person shall appear to claim the same who may be entitled thereto, he shall, within two months after finding such goods, and before using the same to their injury, procure an appraisal thereof by a justice of the peace of his town, which appraisal shall be certified to by such justice, and filed in the town clerk's office of such town.

When also notice to be published, and appraisal procured, &c.

Within what time and on what terms owner to have restitution.

SECTION 12. If the owner of such lost money or goods shall appear within one year after notice given to the town clerk as aforesaid, and shall make out his right thereto, he shall have restitution of the same or the value thereof, upon his paying all the costs and charges thereon, including a reasonable compensation to the finder for his trouble.

If owner do not appear, finder to pay one-half of value to town treasurer.

SECTION 13. If no owner shall appear within one year, then the finder of such lost money or goods shall pay one-half of the value thereof, after deducting all legal charges, to the treasurer of the town; and in case such finder shall neglect to pay the same on demand, after the expiration of the time aforesaid, the same may be sued for and recovered by the said treasurer, in the name of the town.

Penalty on finder for neglect to give notice, &c., where value exceeds three dollars.

SECTION 14. If any finder of lost money or goods, of the value of three dollars or upward, shall neglect to give notice of the same, and otherwise to comply with the provisions of this chapter, he shall be liable for the full value of such money or goods, one-half to the use of the town, and the other half to the person who shall sue for the same, and shall also be responsible to the owner for such lost money or goods.

R. S. 1858.  
CHAP. 45.  
p. 380.

## CHAPTER XLV.

### OF MARKS AND BRANDS AND FILING CHATTEL MORTGAGES.

#### OF MARKS AND BRANDS.

Town clerk on application to record marks and brands.

SECTION 1. It shall be the duty of the town clerk of each town, on the application of any person residing in such town, to record a description of the marks or brands with which such person may be desirous of marking his horses, cattle, sheep, or hogs; but the same description shall not be recorded for more than one resident of the same town.

Penalty for using mark or brand of another, for marking horses, &c., of another, and for destroying or altering mark.

SECTION 2. If any person shall willfully mark any of his horses, cattle, sheep, or hogs, with the same mark or brand previously recorded by any resident of the same town, and while the same mark or brand shall be used by such resident, the person so offending shall forfeit for every such offense five dollars, to be recovered before any justice of the peace of such county; if any person shall willfully mark or brand the horses, cattle, sheep, or hogs of any other person with his own brand or mark, the person so offending shall forfeit for every such offense ten dollars, to be recovered before any justice of the peace of the proper county; and if any person shall willfully destroy or alter any mark or brand upon any horses, cattle, sheep, or hogs, the property of another, the person so offending shall, on conviction thereof before any justice of the peace, forfeit and pay for every such offense a sum not exceeding ten dollars, and shall moreover pay to the party injured double damages.

OF FILING CHATTEL MORTGAGES.

SECTION 3. Any mortgage of personal property or a copy thereof may be filed in the office of the clerk of any town or city where the mortgagor executing the same resides; or in case he is a non-resident of the state, then in the office of the clerk of the town or city where the property mortgaged may be at the time of executing such mortgage; and such clerk shall indorse on such instrument or copy the time of receiving the same, and shall keep the same in his office for the inspection of all persons: and such mortgages so filed shall be as valid as if the same had been recorded in the office of the register of deeds.

SECTION 4. Such clerk shall also enter in a book to be provided by him for that purpose, the names of all the parties to such instruments, arranging the names of the mortgagors alphabetically, and shall note therein the time of filing each instrument or copy.

Town clerk to enter names of parties in a book, &c.

SECTION 5. Every such mortgage shall cease to be valid against the creditors of the person making the same, or subsequent purchasers or mortgagees in good faith, after the expiration of one year from the filing of the same or a copy thereof, unless, within thirty days next preceding the expiration of the year, the mortgagee, his agent or attorney, shall make and annex to the instrument or copy on file as aforesaid, an affidavit setting forth the interest which the mortgagee has by virtue of such mortgage in the property therein mentioned, upon which affidavit the clerk shall indorse the time when the same was filed.

When mortgage to expire unless affidavit made and annexed thereto.

SECTION 6. The effect of any such affidavit shall not continue beyond one year from the time when such mortgage would otherwise cease to be valid, as against subsequent purchasers or mortgagees in good faith; but within thirty days next preceding the time when any such mortgage would otherwise cease to be valid as aforesaid, a similar affidavit may be filed and annexed, as provided in the preceding section, and with like effect.

Effect of affidavit; how long to continue; new one to be filed.

SECTION 7. A copy of any such instrument, or of any copy thereof, so filed as aforesaid, including any affidavits annexed thereto in pursuance of this chapter, certified by the clerk in whose office the same shall be filed, shall be received in evidence, but only of the fact that such instrument, copy, or affidavit was received and filed, according to the indorsement of the clerk thereon, and of no other fact.

Effect of certified copy of mortgage in evidence.

SECTION 8. Every such clerk shall be entitled to receive the following fees for services under the provisions of this chapter:—

Fees of clerk.

For recording any mark or brand, twelve and a half cents.

For giving a certificate of the same, twelve and a half cents.

For filing each instrument, copy, or affidavit, six cents.

For entering the same in a book, six cents.

And the like fees for certified copies of such instruments, copies, or affidavits as are allowed by law for copies of records kept by registers of deeds.

## CHAPTER LI.

R. S. 1858.  
CHAP. 51.  
p. 391.

## OF THE DISTRAINING OF CATTLE DOING DAMAGE.

Owner, &c., may  
distrain beasts  
doing damage in  
his enclosure.

Beasts to be kept  
until damages  
are appraised.

S. L. 1862, ch. 20.

Freeholders to  
ascertain dam-  
ages, and hear  
evidence.

Id.

To certify dam-  
age, and in case  
of disagreement,  
examine suffi-  
ciency of fence,  
and determine  
same.

If damages, &c.,  
be not paid,  
animal to be put  
in pound.

Id.

Pound master to  
sell after due  
notice.

Id.

SECTION 1. It shall be lawful for the owner or occupant of lands to distrain all beasts doing damage within his enclosure, and when any distress shall be made of any beasts doing damage, the person distraining shall keep such beasts in some secure place other than the public pound, until his damages shall be appraised, and within twenty-four hours after such distress,—unless the same shall be made on Saturday, in which case, before the Tuesday morning thereafter,—he shall apply to a justice of the peace, who shall appoint three disinterested freeholders of such town to appraise the damages.

SECTION 2. Such freeholders shall thereupon immediately repair to the place, and view the damage done, and they may take the evidence of any competent witness of the facts and circumstances necessary to enable them to ascertain the extent of such damage, for which purpose the said freeholders, or either of them, are hereby authorized to administer an oath to every such witness.

SECTION 3. The said freeholders shall ascertain and certify under their hands the amount of such damage, with their fees for their services, not exceeding one dollar per day; and if any disagreement shall arise touching the sufficiency of any fence around the premises where such damage was done, the said appraisers may examine witnesses in relation thereto, and for that purpose may administer oaths to such witnesses, and they shall determine such disagreement, which decision shall be conclusive.

SECTION 4. Within twenty-four hours after the said damages shall be so appraised, unless the amount so ascertained and the fees of the appraisers shall have been paid, the person making such distress shall cause the beast distrained to be put in the nearest pound in the same county, if there be one, and if there be no pound within the county, then in some secure enclosure in the county, there to remain until the same be seized in an action according to law, or sold as hereinafter directed, or until the damages so certified, and the fees of the appraisers and cost of keeping such beasts, be paid; and if said beasts be put in any pound, he shall deliver the certificate of the appraisers to the keeper of such pound.

SECTION 5. The pound masters of the several towns or counties of this state shall receive and keep the beasts so delivered to them, in the public pound, and unless the same shall be seized in an action or discharged according to law within six days, such pound masters shall sell such beasts, or so many of them as shall be necessary, at public vendue, giving two days' notice of such sale by advertisement, to be fixed up at such pound, and at three of the most public places within the town where such sale is to be had: *provided always*, that the pound

master, or person keeping any such animals, shall furnish them with sufficient and appropriate food, and take good care of said animals, and shall be paid therefor as part of the fees and costs in such cases.

To furnish food, &c., to animals.

SECTION 6. If there shall be no pound within the county where such beasts are distrained, and the said beasts shall be kept in an enclosure other than the public pound, and unless the same shall be discharged in the manner mentioned in the fifth section of this chapter, within six days from the time of such distraining, such beasts, or so many of them as shall be necessary, shall be sold at public vendue, by or under the direction of the sheriff or any constable of the county, after the like notice as is required in the case of constable's sale of goods and chattels taken by execution or attachment: *provided*, that if the owner or owners of such beasts shall be known to the person distraining, it shall be the duty of the person so distraining to notify the owner or owners of such beasts, within twenty-four hours after such distraining, if such owner or owners shall reside in the same town, and if such owner or owners shall not reside in the same town, but in the same county, within three days after such distraining. Such notice shall specify the time when and the place where such beasts were distrained, the number of such beasts, and the amount of damage done, if known.

If no pound, to be kept in enclosure, and sold under direction of sheriff.

S. L. 1862, ch. 29.

If owner is known he must be notified; what notice must specify.

SECTION 7. From the proceeds of such sale, the person making the same shall retain sufficient to pay the amount of his fees, and the cost of keeping such beasts, and the charges of such sale; and he shall pay to the persons distraining such beasts the damages so certified, with the fees of the appraisers; and if there be any surplus, the same shall be paid to the owner of such beasts if known; if no owner appear at the time of sale or within one week thereafter and claim such surplus, the same shall be paid by the person making such sale, to the town treasurer of the town where such sale is made.

Costs and damages to be paid out of proceeds of sale. How surplus disposed of.

SECTION 8. The several town treasurers to whom any moneys may be paid, in pursuance of the seventh section of this chapter, shall keep the same for one year from the time of such sale, unless the owner of such beasts shall sooner demand the same. But if the said money shall be so demanded, the same shall be paid to the owner of such beasts, the said treasurer deducting therefrom two per cent. for his fees.

Town treasurer to restrain surplus, unless owner demand same.

SECTION 9. If the owner of such beasts shall not appear within one year from the time of such sale and demand such surplus money, the said treasurer shall place the same in the treasury of his town, to be expended in support of the poor of such town. Said money to be paid over to the owner thereof, at any time thereafter, on proper proof being produced to the town treasurer.

If not demanded, surplus to be paid into poor fund.



## CHAPTER LII.

R. S. 1858.  
CHAP. 52.  
p. 393.

## OF DISTRAINING SHEEP RUNNING AT LARGE, &amp;c.

Rams not suffered to go at large, &c.; penalty therefor and proceedings in case ram is taken up.

S. L. 1852, ch. 387.

SECTION 2. If the owner of any ram shall suffer him to go at large or out of his enclosure, between the fifteenth day of July and the first day of December in the same year, such owner shall forfeit ten dollars to the person who shall take up said ram, for each time he shall be so found at large or out of the owner's enclosure and taken up, which forfeiture may be recovered in an action, in the manner set forth in the first section of this chapter.<sup>1</sup> He shall also be liable for any damage sustained by any person in consequence of such running at large of any such ram; and the person taking up any ram, if the owner shall not be known, shall secure and keep the same, and shall, within twenty-four hours next after taking him up, lodge a certificate with the town clerk setting forth the marks, natural and artificial, if any such there be, of which certificate the town clerk shall make a record; and such person shall post up a certified copy of such record in three of the most public places in the town where such ram was taken up; for which record and copy the town clerk may receive twenty cents from the person lodging said certificate; and if the owner of any ram taken up and posted as aforesaid, shall, within six days after such posting, pay or tender the said forfeiture to the person so taking up and posting such ram, and the said clerk's fees as aforesaid, such ram shall be restored to the owner; but if the owner shall not pay or tender such forfeiture and costs as aforesaid within the said six days, such ram shall be forfeited to the person so taking and posting the same.

R. S. 1858.  
CHAP. 67.  
p. 422.

## CHAPTER LXVII.

## OF CEMETERY ASSOCIATIONS AND TOWN CEMETERIES.

## OF TOWN CEMETERIES.

Town boards, if they deem necessary, may purchase cemetery grounds.

SECTION 17. It shall be the duty of the town board of the several towns of this state, on the application of ten freeholders of any such town, in writing, at any regular meeting of such board, provided they shall deem it necessary so to do, to purchase in the name of the town, suitable grounds, not exceeding twenty acres,

(1) By the first section of this act the forfeiture may be recovered by action before any justice of the peace of the county where the offense is committed, and when a justice of the peace has not jurisdiction of the amount claimed, then the same may be sued for and recovered in an action in the circuit court with costs.

for and to be used exclusively as a town cemetery, which said grounds, or such portion thereof as may from time to time become necessary for that purpose, shall be surveyed, divided, and plotted into lots of such size, and with such avenues, alleys, and walks as the town board shall direct; and a map of such survey shall be filed in the office of the town clerk, and the ground so purchased shall, under and by the directions of the town board, be enclosed by a good and appropriate fence, as soon as practicable.<sup>1</sup>

Grounds to be surveyed and plotted.

SECTION 18. After such map shall have been filed in the office of the town clerk, as above provided, the town board may, in the name of the town, sell and convey the lots as designated on such map, upon such terms and subject to such conditions as such board shall prescribe: *provided*, that every conveyance of any such lot or lots shall be expressly for burial purposes and no other, and shall be executed in the name of the town, and signed by the chairman of supervisors, and attested by the clerk of such town.

Town board may sell lots for burial purposes.

SECTION 19. The proceeds arising from the sale of said lots, shall, by said board, be applied to the payment of any debts incurred by the town in the purchase, fencing, and embellishing such grounds, and the avenues leading thereto, and in defraying the necessary expense in the management and care of the same, and for no other purpose.

Proceeds of sale how expended.

SECTION 20. After there shall have been an interment in any lot conveyed as above provided, such lot, from the time of such first interment, shall forever thereafter be inalienable, and shall on the death of the proprietor thereof descend to his heirs, but any one or more of such heirs may release to any other of such heirs, his, her, or their interest in such lot, which release shall be filed in the office of the town clerk.

After interment, lot to be inalienable.

#### *Chapter 54, Acts of a general nature of 1858.*

SECTION 1. Section one of chapter thirteen of the general laws of 1857, entitled "an act to provide for town cemeteries," (*section seventeen of chapter sixty-seven of the revised statutes*,) is hereby amended so as to read as follows: It shall be the duty of the board of supervisors of the several towns of this state, when so instructed by a vote of the electors of the town, at any annual town meeting, to purchase in the name of such town, suitable grounds, not exceeding ten acres, for and to be used exclusively as a town cemetery, which said grounds, or such portion thereof as may from time to time become necessary for that purpose, shall be surveyed, divided, and plotted into lots of such size and with such avenues, alleys, and walks as the said town board shall direct,

Duty of town board on vote of town meeting to purchase grounds, &c.

<sup>1</sup> *Form of application of ten freeholders for purchase of cemetery grounds.*

To the town board of the town of ———, in the county of ———.

The undersigned freeholders of said town, do hereby make application to you, and request that you will purchase, in the name of the town, suitable grounds, not exceeding twenty acres, for and to be used exclusively as a town cemetery.

Dated at ———, this ——— day of ———, 18—.

and a map of such survey shall be filed in the office of the town clerk; and the grounds so purchased shall, under and by the direction of such town board, be enclosed by a good and appropriate fence as soon as practicable: *provided*, that the price paid per acre for such grounds shall not exceed a sum which shall be fixed by a vote of the electors at such town election.

Approved April 21st, 1858.

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